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**AGENDA BILL  
CITY OF BREMERTON  
CITY COUNCIL**

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**SUBJECT:** Resolution No 3181  
authorizing a sole source contract with  
Columbia Hospitality, Inc for management  
of the Gold Mountain Golf Club

Study Session Date	<u>September 12, 2012</u>
COUNCIL MEETING Date	<u>October 3, 2012</u>
Department	<u>Financial Services</u>
Presenter	<u>Becky Hasart</u>
Phone	<u>473-5722</u>

**SUMMARY:** The proposed resolution authorizes the City to enter into a sole source management agreement and transition agreement with Columbia Hospitality, Inc for the promotion, operation and management of the Gold Mountain Golf Club

**ATTACHMENTS:** Proposed Resolution No 3181, Proposed Transition Agreement, Proposed Golf Course Management Agreement, Draft Pro-Forma Scenario (updated)

**FISCAL IMPACTS** (Include Budgeted Amount) The current proposal on the table is for Columbia Hospitality to receive a 5% base management fee and a 20% incentive fee for any net operating income above \$600,000. The attached pro-forma shows the impacts of this proposal. If the revenues come in as listed under the yellow highlighted column, the management fee for 2013 would be \$185,048 and the City would be in the positive by \$466,864 before any consideration for debt service and capital reserve. With debt service and a targeted 4% of revenue for capital reserve, the City would be in the positive by \$36,796 (\$282,030 for 2013 debt service and \$148,038 reserved for capital).

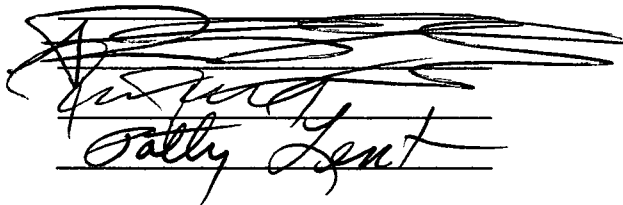
**APPROVALS:**

DEPARTMENT DIRECTOR

CITY ATTORNEY

FINANCE DIRECTOR

MAYOR:




**RECOMMENDED MOTION:**

Move to pass Resolution No 3181 approving the sole source Golf Course Management Agreement and the Transition Agreement with Columbia Hospitality, Inc, and further authorizing the Mayor to negotiate, finalize and execute the agreements with substantially the same terms and conditions as presented

**STUDY SESSION ACTION:** ☐ Consent Agenda ☒ General Business ☐ Public Hearing

COUNCIL PRESIDENT



**COUNCIL ACTION:** ☐ Approve ☐ Deny ☐ Table ☐ Continue ☐ No Action

**RESOLUTION NO. 3181**

**A RESOLUTION** of the City Council of the City of Bremerton, Washington, authorizing a sole source contract with Columbia Hospitality, Inc for operation, promotion and management of the Gold Mountain Golf Club

WHEREAS, BMC 2 76 040 establishes bidding procedures for the purchase of goods and services, and

WHEREAS, pursuant to BMC 2 76 090, the request for bids requirement may be waived by written determination that either the materials, supplies, equipment or services are clearly and legitimately limited to a single source of supply, or that materials, supplies, equipment or services are subject to special market conditions, involve special facilities or services, or that a bid would not be otherwise practical or in the City's best interests under the circumstances, in which instances the purchase price may be best established by direct negotiation, and

WHEREAS, Columbia Hospitality, Inc has been managing and operating the Harborside Conference Center on behalf of the City since 2003, and

WHEREAS, the City has experienced a good working relationship with Columbia Hospitality, Inc and the management and operation of the conference center has been very successful, and

WHEREAS, the operation of Gold Mountain Golf Club by Columbia Hospitality, Inc would allow for the combining of finances, marketing and other resources with the operation of the conference center, and

WHEREAS, the City Council desires to waive the request for bids requirement and authorize sole source contracts with Columbia Hospitality for the management and operation of the Gold mountain Golf Club, and

WHEREAS, the City Council desires to enter into a management agreement with Columbia Hospitality, Inc for the management and operation of the Gold Mountain Golf Club to begin in 2013 and further to enter into a transitional agreement for October through December 2012 to allow for the transition of management of the golf course from the current manager to Columbia Hospitality, Inc , NOW THEREFORE,

**THE CITY COUNCIL OF THE CITY OF BREMERTON, WASHINGTON,  
DOES HEREBY RESOLVE AS FOLLOWS**

**SECTION 1.** The recitals set forth above are hereby incorporated as if set forth herein in full

**SECTION 2.** Pursuant to BMC 2 76 090, the request for bids requirement is hereby waived and sole source contracts are hereby authorized for the operation, promotion, and management of the Gold Mountain Golf Club.

**SECTION 3.** The Mayor is authorized to negotiate, finalize and enter into the Transition Agreement with substantially the same terms and conditions as presented in Exhibit A attached hereto.

**SECTION 4.** The Mayor is authorized to negotiate, finalize and enter into the Golf Course Management Agreement with substantially the same terms and conditions as presented in Exhibit B attached hereto

**SECTION 5. Severability** If any one or more sections, subsections, or sentences of this Resolution are held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this Resolution and the same shall remain in full force and effect

**SECTION 6. Effective Date** This Resolution shall take effect and be in force immediately upon its passage.

PASSED by the City Council of the City of Bremerton, Washington this \_\_\_\_\_ day of \_\_\_\_\_, 2012

\_\_\_\_\_  
JIM McDONALD, Council President

APPROVED AS TO FORM

ATTEST

\_\_\_\_\_  
ROGER A LUBOVICH, City Attorney

\_\_\_\_\_  
SHANNON CORIN, Interim City Clerk

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# PROFESSIONAL SERVICES AGREEMENT

## Columbia Hospitality, Inc. - Transition Agreement

The City of Bremerton ("City") and Columbia Hospitality, Inc., a Washington corporation ("Manager"), referred to collectively as the "Parties," enter into the following Professional Services Agreement dated effective October 4, 2012

**I. Scope:** The Manager agrees to perform the services more specifically described in the Scope of Work, attached hereto as Exhibit A, which is incorporated by reference herein. The Scope of Work may be modified only pursuant to Section IX.I of this Agreement. If the Scope of Work provides for unspecified additional services such services shall only be performed upon the express written request of the City. Manager represents that the services furnished under this Agreement will be performed in accordance with applicable industry practices in effect at the time such services are performed

**II. Term:** The City and the Manager agree that work on the tasks described in Exhibit A will be performed from October 4, 2012 through December 31, 2012

**III. Compensation:** In consideration of the services provided pursuant to this Agreement, the City shall pay Manager the amount of \$7,000.00 per month for the services to be performed

On or before the 1<sup>st</sup> day of each month during the term of this Agreement, Manager shall submit a monthly billing statement. Upon receipt of a conforming billing statement, the City shall promptly make payment. Amounts not paid within thirty (30) days of the statement date shall be subject to a late fee equal to the lesser of (a) one and one-half percent (1½%) per month or (b) the legal maximum rate of interest

Manager shall not perform work beyond the Scope of Work, nor shall be compensated for such work, unless the Scope of Work or amount of compensation is modified pursuant to this Agreement. Manager shall only be compensated for additional services if requested and agreed upon by the City

**IV. Relationship of Parties:** Manager represents that it is skilled in the matters addressed in the Scope of Work and is performing independent functions and responsibilities within its field of expertise. Manager and its personnel are independent contractors and not employees of the City. Manager and its personnel have no authority to bind the City or to control the City's employees and contractors. None of the benefits provided by the City to its employees, including, but not limited to, compensation, insurance, and unemployment insurance are available from the City to the employees, agents, representatives, or contractors of the Manager. Manager will be solely and entirely responsible for its acts and for the acts of Manager's agents, employees, representatives and contractors during the performance of this Agreement

As an independent contractor, Manager is responsible for its own management. The City's administration and enforcement of this Agreement shall not be deemed an exercise of managerial control over Manager or its personnel

As an independent contractor, Manager is responsible for payment of all taxes and licensing fees necessary to perform its obligations under this Agreement. These taxes and fees include but are not limited to State industrial insurance, Business & Occupation, State professional licensing, and City business licensing. If any taxes or fees due the City have been declared delinquent, the City may withhold the delinquent amount, plus any additional charges arising from the delinquency, from any payments due Manager.

#### **V. Indemnification:**

(a) Each party shall defend, indemnify and hold the other party, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all reasonable legal costs and attorney fees, arising or alleged to arise out of or in connection with its performance of this Agreement.

(b) Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Manager and the Owner, its officers, officials, employees and volunteers, the Manager's liability hereunder shall be only to the extent of the Manager's negligence.

(c) IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES EACH PARTY'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER.

(d) The provisions of this section shall survive the expiration or termination of this Agreement.

**VI. Insurance:** Before beginning work on the project described in this Agreement, the Manager shall provide a Certificate of Insurance evidencing

1. Automobile Liability insurance with limits no less than \$1,000,000 combined single limit per accident for bodily injury and property damage; and
2. Commercial General Liability insurance written on an occurrence basis with limits no less than \$1,000,000 combined single limit per occurrence and general aggregate for personal injury, bodily injury and property damage. Coverage shall include but not be limited to blanket contractual, products/completed operations/broad form property damage, explosion, collapse and underground (XCU) if applicable, and employer's liability, and
3. Excess Liability insurance with limits not less than 1,000,000 limit per occurrence and aggregate
4. Professional Liability insurance with limits no less than \$1,000,000 limit per occurrence/claim

Any payment of deductible or self insured retention shall be the sole responsibility of the Manager.

All required policies shall be provided on an "occurrence" basis except professional liability insurance (if required), which may be provided on a "claims-made" basis

The City shall be named as an additional insured on the Commercial General Liability insurance policy, as respects work performed by or on behalf of the Manager and a copy of an endorsement that is acceptable to the City, which names the City as an additional insured shall be attached to the Certificate of Insurance. The City reserves the right to receive a certified copy of all the required insurance policies and endorsements. The City further reserves the right to reject any unacceptable policies and/or endorsements

The Manager's Commercial General Liability insurance shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respects to the limits of the insurer's liability

The Manager's insurance shall be primary insurance as respects the City and it shall be an affirmative obligation upon Manager to advise the City's Risk Manager by fax at (360) 473-5161, or by certified mail, return receipt requested to City of Bremerton, attn: Risk Management, 345 6<sup>th</sup> Street, Suite 600, Bremerton, WA 98337 within two days of the cancellation, suspension or substantive change of any insurance policy set out herein, and failure to do so shall be construed to be a breach of this Agreement

The City also reserves its unqualified right to require at any time and for any reason, proof of coverage in the form of a duplicate of the insurance policy with all endorsements as evidence of coverage.

**VII. Limitations on Scope:** The City acknowledges and agrees to the following limitations on the scope of services provided hereunder

(a) Any and all financial projections prepared by Manager within the scope of services provided under this Agreement are intended solely to assist the City and are not to be relied upon by the City or any other third party as to the accuracy of information contained therein or the results predicted. The City acknowledges and agrees that Manager shall not be held responsible by the City or any third party for any divergence between such projections and budgets and actual operating results

(b) Deliverables, if any, resulting from the services shall be dated as of the date of completion. Manager is under no obligation to update the results of its work to incorporate changes in market conditions or project concept that occur subsequent to the completion of the services

**VIII. Limitation of Liability and Warranty:**

(a) NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR TO ANY THIRD PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES OF ANY KIND OR NATURE, INCLUDING LOST PROFITS OR FRUSTRATION OF BUSINESS EXPECTATIONS, WHETHER ARISING OUT OF SUCH PARTY'S BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE OR OTHERWISE

(b) THE CITY ACKNOWLEDGES AND AGREES THAT, EXCEPT FOR MANAGER'S INDEMNIFICATION OBLIGATIONS UNDER SECTION V OR LIABILITIES ARISING FROM MANAGER'S TORTIOUS CONDUCT, MANAGER AND ITS PERSONNEL SHALL NOT BE LIABLE TO CITY FOR ANY CLAIMS, LIABILITIES OR EXPENSES FOR CLAIMS MADE BY THE CITY RELATING TO THIS AGREEMENT FOR AN AGGREGATE AMOUNT IN EXCESS OF THE COMPENSATION PAID BY THE CITY TO MANAGER UNDER THIS AGREEMENT

(c) EXCEPT FOR THE LIMITED WARRANTIES EXPRESSLY SET FORTH IN THIS AGREEMENT, MANAGER DISCLAIMS ANY OTHER WARRANTIES OF ANY KIND, EITHER EXPRESSED, STATUTORY, OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES OF TITLE, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT

#### **IX. General Conditions:**

A Reports and Information: When requested by the City, Manager shall furnish periodic reports and documents on matters covered by this Agreement. The reports and documents shall be furnished in the time and form reasonably requested. Manager shall maintain accounting records in accordance with Generally Accepted Accounting Principles (GAAP) to substantiate all billed amounts

B Representations and Warranties: Each Party represents and warrants to the other that (i) such party has the full power and legal right to execute, perform and observe all of the provision under this Agreement and (ii) this Agreement constitutes a valid and binding obligation of such party and does not constitute a breach or default under such party's governing documents or the terms, conditions or provision of any agreement or instrument to which such party is a party or any applicable law

C Confidentiality: All written information submitted by the City to the Manager in connection with the services performed by the Manager under this Agreement will be safeguarded by the Manager to at least the same extent as the Manager safeguards like information relating to its own business. If such information is publicly available or is already in Manager's possession or known to it, or is rightfully obtained by the Manager from third parties, Manager shall bear no responsibility for its disclosure, inadvertent or otherwise.

D Ownership and Use of Records and Documents: All data, documents and files created by Manager under this Agreement may be stored at Manager's office in Seattle, Washington. Manager shall make such data, documents, and files available for the City's inspection and review upon its request at all reasonable times for the purpose of editing, modifying and updating as necessary until such time as the City is capable of storing such information in the City's offices. Duplicate copies of this information shall be provided to the City upon its request, and at reasonable cost.

All documents, including all reports, drawings, specifications, computer software or other items prepared or furnished by Manager pursuant to this Agreement exclusively for the City's

use, are instruments of service with respect to the project and are the property of the City. Any reuse by the City for other than the specific purpose intended will be at City's sole risk.

E. Work Performed at Manager's Risk Manager shall take all precautions necessary and shall be responsible for the safety of its employees, agents, and sub-Managers in the performance of the work hereunder and shall utilize all protection necessary for that purpose. All work shall be done at Manager's own risk, and Manager shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the work.

F. Place of Work The Manager shall perform the work authorized under this Agreement at its offices in Seattle, Washington. Meetings with the City staff as described in Exhibit A, Scope of Work, shall take place at the City's offices, or at locations mutually agreed upon by the parties.

G. Entire Agreement This Agreement and its Exhibits constitutes the entire agreement between the Parties, and the Parties acknowledge that there are no other agreements, written or oral, that have not been set forth in the text of this Agreement.

H. Severability Should any part of this Agreement be found void, the balance of the Agreement shall remain in full force and effect.

I. Modification This Agreement may only be modified by written instrument signed by both Parties.

J. Written Notices All communications regarding this Agreement shall be sent to the parties at the addresses listed below by registered or 1st class mail, or by personal service, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may be hereafter specified in writing.

If to City	City of Bremerton City Hall, 345 6th Street, Suite 600 Bremerton, WA 98337 Attention: Director of Financial Services
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Telephone (360) 473-5722  
Facsimile (360) 473-5200

If to Manager	Columbia Hospitality, Inc 2223 Alaskan Way, Suite 200 Seattle, WA 98121 Attention: John Oppenheimer
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K. Waiver Failure to enforce any provision of this Agreement shall not be deemed a waiver of that provision. Waiver of any right or power arising out of this Agreement shall not be deemed waiver of any other right or power.



**L. Non-Waiver of Breach:** The failure of the City to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein conferred in one or more instances shall not be construed to be a waiver or relinquishment of said covenants, agreements or options, and the same shall be and remain in full force and effect

**M Compliance with Laws:** Manager shall comply with all applicable Federal, State, and local laws in performing its obligations under this Agreement

**N Choice of Law and Venue:** This Agreement shall be interpreted according to the laws of the State of Washington Any judicial action to resolve disputes arising out of this Agreement shall be brought in Kitsap County Superior Court.

**O Attorneys' Fees** In the event of litigation to enforce any of the terms or provisions herein, each party shall pay all its own costs and attorney's fees

**P Assignment:** Any assignment of this agreement by the Contractor without the written consent of the City shall be void, such consent not to be unreasonably withheld or delayed Notwithstanding the foregoing, Manager may subcontract portions of the services to contractors or subcontractors selected and retained by Manager in the ordinary course Manager shall remain fully responsible for the acts or omissions of any contractor or subcontractor retained by Manager to provide services hereunder.

**Q. Non-Solicitation** The City shall not source, recruit, or solicit for employment with the City or any other entity, including affiliates of the City, any employee of Manager until the earlier of twenty-four (24) months after the expiration or termination of this Agreement or twenty-four (24) months after the employee has ceased to be employed by Manager

**R Cooperation** The City and its employees and contractors shall cooperate with Manager in the performance by Manager of its services hereunder, including providing Manager with timely access to data, information and the personnel and consultants of the City

**X. Nondiscrimination:** Manager shall not discriminate in employment or services to the public on the basis of race, color, national origin, sex, religion, age, marital status, disability, or sexual orientation except for employment actions based on bona fide occupational qualification

**XI. Termination:** This Agreement shall remain in force until completion and acceptance of the services or terminated by written instrument upon mutual consent This Agreement may be immediately terminated for cause by a Party if the other Party substantially fails to perform through no fault of the terminating Party, and the non-performing Party does not commence correction of the failure of performance within thirty (30) days of the terminating Party's sending notice to the non-performing Party Any Notice by Manager shall include a report showing the status of all items listed in the Scope of Work current through the termination date

**A Excusable Delays** The right of Manager to proceed shall not be terminated nor shall Manager be charged with liquidated damages for any delays in the completion of the work due to 1) any acts of the federal government in controlling, restricting, or requisitioning materials, equipment, tools, or labor by reason of war, national defense, or other national emergency, 2)

any acts of the City or its managers, employees or contractors, or other public agencies causing such delay, and 3) causes not reasonably foreseeable by the parties at the time of the execution of the Agreement that are beyond the control and without the fault or negligence of the Manager, including, but not restricted to, acts of God, fires, floods, strikes, or weather of unusual severity PROVIDED, HOWEVER, that the Manager must promptly notify the City within ten (10) calendar days in writing of the cause of the delay. If, on the basis of the facts and the terms of this Agreement, the delay is properly excusable, the City shall, in writing, extend the time for completing the work for a period of time commensurate with the period of excusable delay.

B Rights Upon Termination In the event of termination, the City shall pay for all services performed by the Manager to the effective date of termination, as described on a final invoice submitted to the City. After termination, the City may take possession of all records and data prepared by Manager exclusively for the City under this Agreement and within the Manager's possession, which may be used by the City without restriction. Any such use not related to the project which Manager was contracted to perform shall be without liability or legal exposure to the Manager.

C Survival Notwithstanding anything to the contrary in this Agreement, all provisions of this Agreement that are expressly or by implication to remain in force after the termination of this Agreement (including Sections IV, V, VII, VIII, IX B - D, IX N, IX O, IX Q, and XI B) will survive the expiration or earlier termination of this Agreement.

CITY OF BREMERTON

COLUMBIA HOSPITALITY, INC

\_\_\_\_\_  
By \_\_\_\_\_  
its \_\_\_\_\_  
Date \_\_\_\_\_

Approved as to form

\_\_\_\_\_  
Bremerton City Attorney

\_\_\_\_\_  
By \_\_\_\_\_  
its \_\_\_\_\_  
Date \_\_\_\_\_

Attest:

\_\_\_\_\_  
City Clerk

## **Exhibit A**

### **Scope of Work**

#### **A. Sales and Marketing**

- 1 Assist the City with the oversight and direction of group sales and marketing
- 2 Completing a comprehensive annual sales and marketing plan for 2013 by December 1, 2012 to include
  - a A calendar of special promotions and tournaments
  - b. Special packages with area hotels
  - c Cross-marketing and sales strategies with the Kitsap Conference Center team
  - d A focus on weddings and social business representing Gold Mountain at wedding shows and adding it to the Columbia Wedding Collection
  - e An improved website and digital marketing with a focus on Facebook, guest messaging, guest surveys, golf packages, Stay and Play packages, and access to the CH database access
  - f Regular website audit and website search engine optimization
  - g Collaboration with Kitsap Visitor and Convention Bureau and the Seattle Convention and Visitors Bureau
  - h Introduction to CHI key accounts
    - 1 Including Gold Mountain in the CHI sales manager referral program
  - j Exposure to cruise passengers at the CTA concierge desk, perhaps provide free golf balls that double as ferry tokens

#### **B. Human Resources / Training and Development**

- 1 Interview all current golf course personnel and prepare for transition
2. Prepare new employee orientation for all anticipated golf course personnel
- 3 Customize golf operations service standard training
4. Conduct service standard training for all golf course personnel
- 5 Identify and train certified trainers
6. Conduct a second day of orientation for all managers focusing on leadership responsibilities and processes

#### **C. Accounting**

- 1 Audit all present purchasing agreements with the goal to include Gold Mountain in Manager's national purchasing agreements and local vendor relationships
- 2 Create a comprehensive budget by December 1
- 3 Audit all accounting system hardware/software including payroll system
- 4 Develop internal control systems
- 5 Develop all purchasing policies/procedures
- 6 Assist the City in acquiring or transferring all necessary operating licenses and permits
- 7 Develop appropriate risk management programs
- 8 Assist the City in establishing appropriate banking relationships/support

**D. Technology**

- 1 Audit all communication systems
- 2 Audit all information technology hardware software
- 3 Audit all computer maintenance agreements
- 4 Audit PCI compliance
- 5 Provide a multiyear capital replacement plan

**E. Food and Beverage**

- 1 Review and revise food and beverage concepts, menus and standard operating procedures
- 2 Review food and beverage cost control systems
- 3 Develop menu item standards and recipes
- 4 Review food handling processes and kitchen cleanliness standards

**F. Maintenance**

- 1 Assist the City in seeking and negotiating a greens maintenance agreement with Ed Faulk Operations, LLC
- 2 Auditing the property's mechanical systems and equipment and provide a multiyear capital plan

## **GOLF COURSE MANAGEMENT AGREEMENT**

### **Gold Mountain Golf Club**

This Golf Course Management Agreement (“**Agreement**”) is entered into on the date fully executed below by and between the City of Bremerton, a Washington municipal corporation (“**Owner**”), and Columbia Hospitality, Inc., a Washington corporation (“**Manager**”) or its permitted assignee

### **RECITALS**

**A.** Owner is the owner of certain real property and the buildings, facilities and other improvements located thereon, which collectively are commonly known as the Gold Mountain Golf Club and located at 7263 W Belfair Valley Road, Bremerton, Washington (the “**Club Facilities**”) The Club Facilities are situated on a portion of the following sections

- W1/2 Section 1, T23N, R1W
- NE1/4 NE1/4 Section 2, T23N, R1W
- SE1/4 SE1/4 Section 35, T24N, R1W
- SW1/4 Section 36, T24N, R1W

and are more particularly delineated on the aerial photo-map attached as Exhibit A

**B** As of the Effective Date, the Club Facilities consist of (i) two 18-hole golf courses, (ii) driving range and practice and putting greens, (iii) a golf pro shop, including a retail store, locker rooms, cart storage and bag storage, (iv) a full service restaurant and bar, including meeting and event space, and (v) various buildings and related facilities used for storage of maintenance and related golf course equipment, golf carts and other golf-course related supplies

**C.** Manager is knowledgeable and experienced in the management and operation of resort facilities similar to the Club Facilities

**D.** Owner wishes to engage Manager to promote, operate and manage the Club Facilities, and Manager is willing to provide such services pursuant to the terms and conditions set forth below

### **AGREEMENTS**

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement and other good and valuable consideration, the receipt of which is hereby acknowledged, Owner and Manager agree as follows

### **ARTICLE I**

#### **INTERPRETATION**

##### **1.01 Definitions**

All initially capitalized terms used and not otherwise defined in this Agreement shall have the meanings set forth below

**“Affiliate”** means any other individual, corporation, partnership, limited liability company or other entity directly or indirectly controlling, controlled by, or under common control with Manager or Owner, as applicable

**“Annual Plan and Budget”** has the meaning set forth in Section 5 04

**“Annual Statements”** has the meaning set forth in Section 5 02

**“Applicable Laws”** means all laws, statutes, ordinances, regulations, codes, bylaws, orders, judgments, directives, rules, guidelines, orders and other requirements of any governmental or regulatory authority having jurisdiction over Owner and the Club Facilities including Environmental Laws and those laws, statutes, codes, rules and other requirements related to employees, health and safety and the accessibility of public facilities to persons with disabilities

**“Base Management Fee”** has the meaning set forth in Section 4 01

**“Capital Improvement”** means a replacement, renewal or addition to FF&E or an alteration, improvement or replacement to the structural, mechanical, electrical, heating, ventilation, air conditioning, exterior, plumbing or vertical transportation elements of the Club Facilities, the cost of which is capitalized pursuant to GAAP

**“Capital Reserve Account”** has the meaning set forth in Section 6 02(a)

**“Centralized Services”** means accounting human resources training and development, public relations, employee relations, payroll processing, information technology and other related services as provided in accordance with Section 2 04

**“Centralized Service Fees”** has the meaning set forth in Section 4 04

**“Club Facilities”** has the meaning set forth in Recital A

**“Confidential Information”** means (a) the terms of this Agreement, (b) all information that one party receives from the other party relating to the disclosing party's business and that is designated in writing as confidential by the disclosing party and (c) Manager's Intellectual Property Notwithstanding the foregoing, the following information is not Confidential Information information that (i) comes into the public domain through no fault of the receiving party, (ii) was lawfully disclosed to the receiving party by a third party, (iii) was disclosed by the receiving party with the disclosing party's written consent, (iv) was independently developed by the receiving party, or (v) was rightfully known by the receiving party prior to entering into this Agreement

**“Environmental Laws”** has the meaning set forth in Section 11 01

**“Event of Default”** has the meaning set forth in Section 3 02

**“FF&E”** means furniture, fixtures and equipment

**“Force Majeure”** means acts of God, acts of war, civil disturbance, governmental action (including the revocation or refusal to grant licenses or permits, where such revocation or refusal is not due to the fault of the party whose performance is to be excused for reasons of Force Majeure), strikes, lockouts, fire, unavoidable casualties, performance of approved Capital Improvements that have an adverse effect on income generating areas of the Club Facilities, or any other causes beyond the

reasonable control of the party claiming such event occurred (excluding, however, (a) lack of financing, (b) financial condition or (c) general economic and/or market factors))

**“GAAP”** means generally accepted accounting principles consistently applied

**“Gross Operating Profit”** means the amount by which Gross Revenue for the applicable period exceeds Operating Expenses for that same period

**“Gross Revenue”** means all revenues, receipts, income and sale proceeds of every kind derived directly or indirectly from the Club Facilities as determined in accordance with GAAP. Gross Revenue shall include, but not be limited to, greens fees, cart fees (motorized and pull cart), club rentals, pro shop sales, income from the rental of meeting and event space or other facilities or services, license, lease and concession fees and rentals paid for any commercial, retail and other space in the Club Facilities (not including gross receipts of licensees, lessees and concessionaires), income from golf lessons and instruction, income from parking, and food and beverage sales provided by the Club Facilities, in and from both on and off-site locations, wholesale and retail sales of the Club Facilities’ merchandise, and service charges. Notwithstanding the foregoing, Gross Revenue from the Club Facilities shall not include the following: gratuities to the Club Facilities’ employees, federal, state or municipal excise, sales or use taxes or any other taxes collected directly from patrons, guests or customers or included as part of the sales price of any goods or services, proceeds from the sale of FF&E (which shall be deposited into the Capital Reserve Account), interest received or accrued with respect to the funds in the Operating Account(s) and Capital Reserve Account, any refunds, rebates, discounts and credits of a similar nature, given, paid or returned in the course of obtaining Gross Revenues or components thereof, insurance proceeds, condemnation proceeds, or any proceeds from any transfer of the Club Facilities.

**“Hazardous Materials”** has the meaning set forth in Section 11.01

**“Incentive Management Fee”** has the meaning set forth in Section 4.02

**“Initial Working Capital Deposit”** has the meaning set forth in Section 5.07

**“Manager”** means Columbia Hospitality, Inc. or its permitted assigns

**“Manager’s Intellectual Property”** has the meaning set forth in Section 12.04

**“Manager’s Trademarks”** has the meaning set forth in Section 12.01

**“Monthly Statement”** has the meaning set forth in Section 5.01

**“Net Operating Income”** means the amount by which Gross Operating Profit for the applicable period exceeds (i) the Base Management Fee, (ii) insurance costs and expenses for the insurance coverages required under Article VII together with any associated deductibles, and (iii) real estate and personal property taxes, if any, for that same period

**“Operating Account(s)”** has the meaning set forth in Section 5.03

**“Operating Expenses”** means all ordinary and necessary expenses, including, without limitation, Reimbursable Expenses, incurred in the operation of the Club Facilities, including without limitation, salaries, wages and benefits of the Club Facilities’ personnel, utilities, administrative expenses, centralized service fees, and advertising and marketing expenses, all as determined in accordance with GAAP, but excluding (a) real estate and personal property taxes, (b) the Base Management Fee, (c) the

Incentive Management Fee, (d) payments pursuant to equipment leases or other forms of FF&E financing, (e) insurance costs and expenses for property and liability coverages required under Article VII together with associated deductibles, (f) amounts expended on Capital Improvements, including, without limitation any funding into or expenditures from the Capital Reserve Account, (g) depreciation and amortization expenses, and (h) costs and expenses of Owner or Owner's personnel

**"Operating Standard"** means the manner in which the Club Facilities are operated, which shall be consistent with the standards and practices maintained at the hotels and other facilities currently operated by Manager

**"Operating Year"** means each 12-month calendar year period, provided that the first Operating Year shall be the partial year beginning on the Commencement Date and ending on the following December 31<sup>st</sup> and, if this Agreement is terminated on a date other than December 31<sup>st</sup>, the partial year ending on the date of termination

**"Owner"** means the City of Bremerton, a Washington municipal corporation

**"Reimbursable Expenses"** means all costs and expenses advanced by Manager or its Affiliates on Owner's account or for or on behalf of Owner in the ordinary course of providing services under this Agreement

## **1.02 Captions, Numbering and Headings**

Captions, numbering and headings of Articles, Sections and Exhibits in this Agreement are for convenience of reference only and shall not be considered in the interpretation of this Agreement. References in this Agreement to Articles, Sections and Exhibits shall be deemed to be references to such Articles, Sections and Exhibits in this Agreement unless otherwise expressly specified.

## **1.03 Number; Gender**

Whenever required by the context, the singular shall include the plural, the neuter gender shall include the male gender and female gender, and vice versa.

## **1.04 Exhibits**

All Schedules and Exhibits referenced in this Agreement are incorporated by this reference as if fully set forth in this Agreement, and all references to this Agreement shall be deemed to include all such Schedules and Exhibits.

## **1.05 No Construction Against Drafter**

This Agreement has been negotiated and prepared by Owner and Manager and their respective attorneys and, should any provision of this Agreement require judicial interpretation, the court interpreting or construing such provision shall not apply the rule of construction that a document is to be construed more strictly against one party.



## **ARTICLE II**

### **MANAGEMENT SERVICES**

#### **2.01 Appointment of Manager / Manager's Management Responsibilities**

Subject to the terms and conditions of this Agreement, Owner engages Manager, as an independent contractor, to service, operate, promote and manage the Club Facilities for and on the account of Owner, as agent for Owner, and grants Manager the exclusive authority, right and full control to service, operate, promote and manage the Club Facilities and the personnel associated with the Club Facilities on a day-to-day basis consistent with the Operating Standard at Owner's sole cost and expense. Manager hereby accepts such engagement and agrees to service, operate, promote and manage the Club Facilities for the account and on behalf of Owner, as Owner's agent, in accordance with the terms of this Agreement. Without limiting the foregoing, Manager shall have sole and exclusive authority to do the following:

- (a) manage all aspects of the Club Facilities' human resource functions, including terms and conditions of employment, recruiting, screening, selection, hiring, training, compensation, employee benefits, supervision, discipline, dismissal and replacement,
- (b) establish all relevant prices, price schedules, rates, rate schedules, rents, lease charges and concession charges for all areas of the Club Facilities,
- (c) negotiate and administer, in the name and on behalf of Owner, leases, licenses and concession agreements for gift shops or other minor areas appurtenant to the Club Facilities,
- (d) provide marketing and sales services for the Club Facilities,
- (e) obtain and keep in full force and effect in Manager's name or in Owner's name, as may be required by Applicable Laws, any and all license and permits to the extent the same is within the control of Manager,
- (f) negotiate, enter into, and administer, in the name and on behalf of Owner, contracts, licenses and purchase orders for services, inventories, provisions, and supplies that are necessary for maintenance and operation of the Club Facilities, and use the same in the management and operation of the Club Facilities,
- (g) negotiate, enter into, and administer, in the name and on behalf of Owner, contracts for the use of meeting areas by groups and individuals,
- (h) institute in its own name or, with Owner's written consent, in the name of Owner or the Club Facilities any and all legal actions or proceedings necessary for, or incident to, operation and maintenance of the Club Facilities,
- (i) maintain the facilities and equipment associated with the Club Facilities in good repair and condition,
- (j) collect all charges, rent and other amounts due from guests, patrons, licensees and concessionaires of the Club Facilities and use those funds, together with funds from other sources that may be available to the Club Facilities, first to pay all Operating Expenses of the Club Facilities on behalf of Owner and then any other financial obligations of the Club Facilities as Owner may reasonably direct, and

(k) perform such other tasks acceptable to Manager as are customary and usual in the operation of a Club Facilities of a class and standing equal to the Club Facilities

Notwithstanding the foregoing, unless otherwise part of the Annual Plan and Budget approved by Owner in accordance with Section 5 02, Manager shall not enter into any agreement in the name of Owner (i) that creates an obligation of Owner that is greater than twenty-five thousand dollars (\$25,000) or (ii) whose term exceeds one year and cannot be terminated without liability on sixty (60) days' written notice without Owner's prior written consent

## **2.02 Personnel**

In furtherance of Manager's obligation to manage the Club Facilities' human resource functions, Manager shall have sole and exclusive responsibility for (a) identifying, interviewing, selecting, appointing, hiring, retaining, supervising, directing, disciplining and firing the Club Facilities' general manager(s) and other senior managers, and all other personnel necessary for the operation of the Club Facilities and the Club Facilities' systems and facilities, and (b) adopting and offering to personnel, and administering on Owner's behalf, employee benefit plans determined by Manager. All personnel associated with the Club Facilities shall be employees of Manager, provided that all costs associated with such personnel shall be an Operating Expense. Costs and expenses related to personnel may include, but are not limited to, benefit administration costs, payroll processing, recruiting, software licensing fees and compliance with all Applicable Laws, including, without limitation, the Consolidated Omnibus Budget Reconciliation Act (COBRA) and the Worker Adjustment and Retraining Notification (WARN) Act.

## **2.03 Sales and Marketing**

In connection with its management of the Club Facilities, Manager shall provide marketing and sales services, including (a) development (as part of the Annual Plan and Budget) and implementation of a sales and marketing program for the Club Facilities, (b) production and distribution of promotional materials, (c) development and implementation of promotional offers or programs, (d) attendance of the Club Facilities' personnel at relevant conventions, meetings, seminars and conferences, (e) selection of, engagement, and guidance to, as required, advertising, creative and public relations personnel and (f) updating and maintenance of the Club Facilities' website. Marketing and sales services provided under this Section 2 03 may be provided by Manager either solely on behalf of the Club Facilities or in conjunction with other similar Manager-operated properties (in which event such services would be centralized and billed to the Club Facilities in accordance with Section 4 04).

## **2.04 Centralized Services**

Owner acknowledges and agrees that in performing services under this Agreement (i) Manager may elect from time to time to perform certain functions (the "Centralized Services") as defined in Section 1 01 on a centralized basis using the personnel and resources of Manager's or its Affiliates' corporate office or other Manager-managed properties and (ii) the costs of any such centralized services shall be allocated fairly and equitably among the Manager-managed properties benefitting from such services. Owner further agrees that Manager may use its reasonable discretion to identify and determine from time to time those functions best performed on a centralized basis and that the costs of providing such Centralized Services to the Club Facilities together with a reasonable profit shall be billed to, and paid by, Owner as an Operating Expense in accordance with Section 4 04.

## **2.05 Conditions to Manager's Obligations**

Notwithstanding anything contained in this Agreement, Manager shall be excused from, and may immediately suspend its performance of, its obligations under this Agreement

(a) To the extent and whenever Manager shall be prevented from compliance with such obligations by events of Force Majeure,

(b) To the extent of any breach of any representation, warranty or covenant contained in this Agreement or default hereunder by Owner, or

(c) In the event Owner fails to provide the working funds necessary to operate the Club Facilities in a manner consistent with the Operating Standard

It is expressly agreed and understood that each and every provision contained in this Agreement pursuant to which Manager is excused from its obligations under this Agreement shall operate without prejudice to any right or remedy that Manager may have hereunder, at law or in equity

## **ARTICLE III**

### **TERM**

#### **3.01 Initial Term and Renewal**

Manager's services under this Agreement shall commence on January 1, 2013 (the "**Commencement Date**") and, unless earlier terminated in accordance with this Agreement, shall continue until the third (3<sup>rd</sup>) anniversary of the Commencement Date (the "**Initial Term**") Upon expiration of the Initial Term, this Agreement shall automatically renew for successive two-year renewal terms (each, a "**Renewal Term**," and together with the Initial Term, the "**Term**"), unless either party provides written notice of its intent not to renew ninety (90) days prior to expiration of the Initial Term

#### **3.02 Termination - Event of Default**

In addition to the other termination rights set forth in this Agreement, this Agreement may be terminated prior to expiration under the following circumstances (each an "**Event of Default**")

(a) By either party, if the other party materially breaches any term of this Agreement or defaults in the performance of any obligation under this Agreement that can be cured with the payment of money and fails to cure such breach within ten (10) days following notice thereof by the non-defaulting party,

(b) By either party, if the other party materially breaches any term of this Agreement or defaults in the performance of any obligation under this Agreement that cannot be cured with the payment of money, and fails to cure such breach or default within thirty (30) days following notice thereof by the non-defaulting party, or, in the event that it is not possible to cure such breach or default within thirty (30) days, the defaulting party fails to commence to cure the breach or default within the 30-day period and thereafter proceed diligently and in good faith to cure such breach or default within ninety (90) days,

(c) By Manager, if Owner fails to timely deposit amounts requested by Manager in accordance with Sections 5 07 or 6 02, or

(d) By either party, in the event of an appointment of a receiver, trustee or liquidator of the other party or of all or any part of its assets, or the filing of a voluntary petition in bankruptcy, the making of a general assignment for the benefit of creditors, the filing of a petition or an answer seeking reorganization or arrangement with creditors or bankruptcy petition or similar petition under state law, and such appointment, filing, assignment, or petition is not vacated within sixty (60) days

The non-defaulting party shall, in addition to its right of termination, be entitled to pursue all other available remedies at law or equity as a result of an Event of Default, including, in the case of a default by Owner, accrued and owing management fees and reimbursable expenses through the effective date of termination

### **3.03 Termination - Convenience**

From and after expiration of the Initial Term, Owner or Manager may terminate this Agreement without penalty or liability by providing the other party one year's prior written notice

### **3.04 Termination – Casualty or Condemnation Event**

Owner may terminate this Agreement in accordance with Sections 8 01 or 8 02 provided that the effectiveness of any such termination occurring prior to expiration of the first full Operating Year (December 31, 2013) shall be conditioned on Owner's payment to Manager of an early termination fee calculated in accordance with table below ("Early Termination Fee")

<b>Effective Termination Date</b>	<b>Early Termination Fee</b>
January 1, 2013 – March 31, 2013	\$100,000
April 1, 2013 – June 30, 2013	\$75,000
July 1, 2013 – September 30, 2013	\$50,000
October 1, 2013 – December 31, 2013	\$25,000

### **3.05 Effect of Termination**

Upon expiration or earlier termination of this Agreement, the parties agree that (a) except for costs and expenses caused by Manager's Event of Default or as otherwise set forth in Section 7 03, any expenses arising as a result of the termination shall be for the sole account of Owner and Owner shall reimburse Manager on receipt of any invoice from Manager for any termination expenses, (b) within thirty (30) days following termination, Owner shall pay Manager any and all fees or other amounts owed under this Agreement through to and including the effective date of termination, including any applicable Early Termination Fee, (c) Manager shall peacefully vacate and surrender the Club Facilities to Owner, (d) Manager shall assign and transfer to Owner (i) all books and records of the Club Facilities in Manager's custody or control, including those contracts, leases and other agreements regarding the Club Facilities that are assignable and not Manager's Intellectual Property and (ii) all right, title and interest in and to all permits and licenses, if any, held by Manager in connection with the Club Facilities, to the extent such transfer or assignment is permitted under Applicable Laws, (e) Owner shall honor all business confirmed for the Club Facilities with reservation dates after the effective date of termination, and (f) as of the effective date of termination, Manager shall remove all Manager's Intellectual Property Upon expiration or earlier termination of this Agreement, the parties' obligations with respect to this Agreement will terminate, except as to liabilities or claims of either party that have accrued or arisen before the termination date Notwithstanding the foregoing, all provisions of this Agreement that are expressly or by

implication to remain in force after the termination of this Agreement (including Articles X, XII and XIII and Sections 3 04, 7 03, 7 04, 11 01, 14 02, 14 03, 14 04, 14 06, 14 07, 14 12 and 14 13) will survive the expiration or earlier termination of this Agreement

## **ARTICLE IV**

### **COMPENSATION**

#### **4.01 Base Management Fee**

From and after the Commencement Date, Owner shall pay Manager for services provided under this Agreement a monthly base management fee of five percent (5%) of the Club Facilities' Gross Revenue (the "**Base Management Fee**") The Base Management Fee shall be paid monthly (prorated for any partial month) on or before the tenth (10<sup>th</sup>) day of the month immediately following the month during which services were rendered.

#### **4.02 Incentive Management Fee**

From and after the Commencement Date and in addition to the Base Management Fee, Owner shall pay Manager for services provided under this Agreement an annual Incentive Management Fee equal to twenty percent (20%) of the Club Facilities' Net Operating Income in excess of Six Hundred Thousand and No/100 Dollars (\$600,000 00) (the "**Incentive Management Fee**") The annual Incentive Management Fee shall be computed and paid quarterly on a cumulative year-to-date basis based on year-to-date figures set forth in the Monthly Statements (with any overpayments for the year to date credited against the Base Management Fee) and a final computation and payment shall be made with the Annual Statements provided hereunder

#### **4.03 Reimbursable Expenses**

From and after the Commencement Date and in addition to the Base Management Fee and Incentive Management Fee, Owner will reimburse Manager for the following Reimbursable Expenses, (a) corporate employees or employees of other Manager-operated properties serving functions associated with the Club Facilities that would otherwise be served by property-level staff, (b) all reasonable third party costs and expenses incurred and paid by Manager and its personnel (corporate or otherwise), including, without limitation, transportation costs, long distance and postage while performing under this Agreement, (c) payments made by Manager to third parties for goods and services in the ordinary course of the Club Facilities' operation, and (d) taxes and similar assessments levied against any reimbursement payable to Manager, including any applicable withholding taxes Owner will pay, within thirty(30) days after the notice date, expenses to be reimbursed to Manager in accordance with this Section 4 03

#### **4.04 Centralized Service Fees**

From and after the Commencement Date, Manager reserves the right to charge certain fees and charges associated with any Centralized Services provided by Manager or its Affiliates in accordance with Section 2 04 ("**Centralized Service Fees**") Centralized Service Fees shall be paid monthly (prorated for any partial month) in arrears, no later than the 15<sup>th</sup> day of each month commencing with the Commencement Date Any such Centralized Service Fees will be allocated equitably among participating Manager-operated properties

#### **4.05 Payment**

Amounts payable to Manager or its Affiliates under this Agreement shall be paid in immediately available funds without reduction for taxes or other assessments. Payment shall be made to the place designated for the giving of notice under Section 14.04 or to such other place designated by Manager. At Manager's option, payments due Manager or its Affiliates may be made by Manager out of the appropriate Operating Account(s).

#### **4.06 Club Facilities Accommodations and Amenities**

In addition to the fees outlined above, Owner shall provide Manager and its staff discounted use of the Club Facilities and their amenities on a "space available basis" for leisure utilization and complimentary use of the Club Facilities for business related visits.

### **ARTICLE V**

#### **ACCOUNTING**

##### **5.01 Operating Expenses Paid by Owner**

All actions of Manager in the performance of its obligations and expenses incurred under this Agreement, including all wages, benefits and other payroll expenses of the Club Facilities' personnel, shall be for, and on behalf of, Owner and for its account, and all debts and liabilities arising in the course of the Club Facilities' operations, including, without limitation, any and all costs related to claims by the Club Facilities' personnel concerning their employment, shall be the obligation of Owner, and Manager shall not be liable for any of such expenses, debts, liabilities and obligations by reason of its direction, management, supervision and operation of the Club Facilities on Owner's behalf.

##### **5.02 Accounting Matters**

During the Term, Manager shall maintain separate books of account and other financial records and systems for the Club Facilities that collect and reflect the results from the Club Facilities in all material respects in accordance with GAAP. All books of account and other financial records of the Club Facilities shall be available to Owner at the Club Facilities at reasonable hours for examination, inspection and copying upon reasonable notice. On or before the twentieth (20<sup>th</sup>) day of each month that follows a month during which the Club Facilities were open and operating, Manager shall furnish to Owner a profit and loss statement for each Club Facilities that contains Gross Revenues, Operating Expenses, Gross Operating Profit and Net Operating Income for the preceding month and the year to date (the "Monthly Statements"). Within thirty (30) days following the end of each Operating Year, Manager shall furnish to Owner the cumulative year-end statements that detail calculations and payments of the fees payable to Manager hereunder (the "Annual Statements"). The parties shall, within thirty (30) days after Owner's receipt of the Annual Statements, make any adjustments, by cash payment, in the amounts paid or retained for such Operating Year as are needed because of the final figures set forth in the Annual Statements. All out-of-pocket costs and expenses incurred in the preparation of any statements, schedules, computation and other reports required under this Article V or any or provision of this Agreement shall be an Operating Expense of the respective Club Facilities.

##### **5.03 Accounts and Expenditures**

All funds derived from the Club Facilities' operations shall be deposited by Manager in separate bank accounts in a bank or banks designated by Manager, subject to Owner's reasonable

approval (the “**Operating Accounts**”) Withdrawals from the Operating Accounts shall be made solely by representatives of Manager whose signatures have been authorized by Owner Reasonable petty cash funds shall be maintained at the Club Facilities Manager shall cause disbursements to be made from the funds collected and deposited in the Operating Accounts in the manner and order designated by Manager, in the exercise of its commercially reasonable discretion Debts and liabilities incurred by Manager hereunder as a result of its operation and management of the Club Facilities, whether asserted before or after expiration or earlier termination, will be paid by Owner to the extent funds are not available for that purpose from Gross Revenue that has been deposited in the Operating Accounts or petty cash Manager shall not be obligated to incur any liability or obligation with respect to the Club Facilities, and Manager shall not be responsible for paying any obligation unless the amounts in the Operating Accounts, together with other funds provided by Owner, are sufficient to make such payment

#### **5.04 Annual Plan and Budget**

On or before August 1<sup>st</sup> of each Operating Year, Manager shall prepare and provide to Owner for its review Manager’s initial estimates (without supporting detail) of Gross Revenue and Operating Expenses for the ensuing Operating Year (the “**Initial Annual Estimates**”) On or before September 1<sup>st</sup> of each Operating Year, Manager shall prepare and provide to Owner for its review and approval Manager’s proposed operating plan and budget for the Club Facilities, which operating plan and budget shall contain, among things, Manager’s Initial Annual Estimates (revised as necessary), as well as estimated Gross Operating Profit and Net Operating Income, proposed Capital Improvements and proposed expenditures from the Capital Reserve Accounts for the ensuing Operating Year (the “**Annual Plan and Budget**”) If Owner disapproves of the Annual Plan and Budget, it shall identify the line items it disapproves and the remaining items shall be approved Until such time as Owner and Manager are able to reach complete agreement over the Annual Plan and Budget, Manager may operate the Club Facilities under the proposed form of Annual Plan and Budget substituting those items still under dispute (other than fixed charges over which Manager has no control) with items taken from the prior Operating Year’s Annual Plan and Budget adjusted to account for changes in anticipated occupancy and inflation and known cost increases For the first Operating Year (Commencement Date – December 31, 2013), Manager shall operate the Club Facilities in accordance with the budget proposed by Manager and adopted by Owner during the Owner’s annual budget process for the 2013 budget

#### **5.05 Compliance with Annual Plan and Budget**

Once the Annual Plan and Budget is approved by Owner or deemed to be approved, Manager may incur the expenditures and implement the provisions of the Annual Plan and Budget and, absent prior approval from Owner, Manager may not exceed amounts set forth in the Annual Plan and Budget (in the aggregate) by more than fifteen percent (15%), provided, however, that the preceding cap shall not apply to line item increases directly attributable to unplanned increases in occupancy or other revenue-producing activities Owner and Manager acknowledge and agree that the Annual Plan and Budget is predicated on revenues and operating expenses estimated at the time of adoption of the Annual Plans and Budgets The parties agree that adjustments to the Annual Plan and Budget may be required for variable expenses and events not reasonably within the control of Owner or Manager All updates and revisions to the Annual Plan and Budget shall be submitted to Owner for review and approval in the manner described in this Section 5.05

#### **5.06 Emergency Expenditures**

Notwithstanding anything to the contrary in this Article or elsewhere in the Agreement, Manager may make expenditures in addition to those provided in the Annual Plan and Budget without the prior approval of Owner if Manager determines in its reasonable discretion that such expenditures are necessary to protect life or property, to comply with Applicable Laws or to avoid suspension of any

service to the Club Facilities, provided that Manager uses commercially reasonable efforts to confer with Owner prior to any such expenditure and that THG, as soon as reasonably possible, provides Owner written notice of any such expenditure

#### **5.07 Working Capital**

Owner acknowledges and agrees that it has sole responsibility for the funding of the Annual Plan and Budget. All costs and expenses with respect to the operation and ownership of the Club Facilities shall be borne solely by and timely paid by Owner. Prior to the commencement of Manager's services under this Agreement, Owner shall deposit no less than Three Hundred Thousand and No/100 Dollars (\$300,000 00) into the Operating Account(s) to fund the transition in operations to Manager and its systems (the "**Initial Working Capital Deposit**"). From and after the Commencement Date, Owner shall ensure that sufficient working capital funds exist and are available to Manager at all times to meet the operating needs of the Club Facilities, which amount shall be no less than two (2) months' average Operating Expenses of the applicable Club Facilities as determined under the applicable Annual Plan and Budget. From time to time during the Term, on Manager's request, Owner shall deposit funds into the Operating Accounts sufficient to allow the uninterrupted operation of the Club Facilities in accordance with the terms of this Agreement and in a manner consistent with the Operating Standard. Owner's deposit shall be made within thirty (30) days after receiving Manager's funding request.

### **ARTICLE VI**

#### **REPAIRS, MAINTENANCE AND CAPITAL IMPROVEMENTS**

##### **6.01 Routine Repairs and Maintenance**

In furtherance of Manager's obligation to maintain the Club Facilities, Manager shall make or cause to be made such routine maintenance, repairs and minor alterations to the Club Facilities, including, without limitation, the golf course greens and surrounding areas, as it determines are necessary for such purposes and as more thoroughly specified in Exhibit B. Such routine maintenance, repairs and alterations shall include only those items that are normally expensed under GAAP and shall be paid from the Operating Account(s). Manager shall comply with RCW Chapters 39.04, 39.12 and 39.80 relating to public works contracting, if and as applicable, for maintenance and repairs. In this regard, Manager will periodically seek the advice of Owner in such matters and Owner will provide administrative and purchasing support to Manager if requested. Manager may not undertake physical alterations (excluding paint and wall and floor finishes) to the Club Facilities unless set forth in an Annual Plan and Budget without prior written consent of Owner.

##### **6.02 Capital Improvements and the Capital Reserve Account**

(a) Owner acknowledges and agrees that as the Club Facilities age, certain Capital Improvements will be required to maintain and operate the Club Facilities' facilities (including the buildings, grounds, FF&E and operating supplies) in a manner consistent with the Operating Standard. To facilitate the funding of such needed Capital Improvements at the Club Facilities, Manager shall deposit, as a minimum, an amount equal to four percent (4%) of the Gross Revenue in capital reserve account established by Manager for the Club Facilities in a bank or banks designated by Manager, subject to Owner's approval (the "**Capital Reserve Account**").

(b) Funds deposited in the Capital Reserve Account shall be used solely for paying for Capital Improvements included and approved in the Annual Plans and Budgets or otherwise approved by Owner, provided, that Manager may make expenditures out of the Capital Reserve Account without



the prior approval of Owner if Manager determines in its reasonable discretion that expenditures are required to protect life or property or comply with Applicable Laws. If the estimate approved by Owner exceeds the Capital Reserve Account balance, Owner will provide the additional funds required for such work within fifteen (15) days after receiving Manager's funding request, and in the event Owner fails to make such deposit, Manager may terminate this Agreement upon ten (10) days' notice to Owner. At the end of each Operating Year, any amount remaining in the Capital Reserve Accounts together with accumulated interest shall be carried forward and credited as an addition to the Capital Reserve Accounts otherwise established for the next succeeding Operating Year. Manager shall have no obligation to supervise any Capital Improvement and all Capital Improvements shall be performed exclusively by Owner and its representatives and agents and not by Manager. The cost of all Capital Improvements shall be borne solely by Owner, shall not be an Operating Expense, and shall be reimbursed from the Capital Reserve Account to the extent there are funds in that account.

(c) Any improvements, alterations, or changes made to the Golf Facilities in accordance with this Section 6.02 shall become a part of the Golf Facilities and shall belong to Owner upon expiration or sooner termination of this Agreement.

### **6.03 Liens**

Subject to Manager's receipt of appropriate funding from Owner, Manager shall keep the Golf Facilities free from any liens arising out of any work performed, materials furnished, or obligations incurred by Manager.

## **ARTICLE VII**

### **INSURANCE AND CLAIMS**

#### **7.01 Insurance and Bonds**

(a) Manager shall, at all times during the Term and at Owner's sole cost and expense, furnish and maintain insurance and/or bonds of the types and with the coverages and deductibles described in Exhibit C with commercial insurance carriers having an A.M. Best rating of A-VII or better. All insurance policies furnished and maintained under this Section 7.01 shall include, to the extent possible, a requirement that the insurer provide each party at least thirty (30) days' advance written notice of cancellation of the applicable policy. Insurance maintained by Manager under this Section 7.01 shall be primary, and any insurance carried by Owner shall be excess and non-contributory. On or before the Commencement Date and prior to the effective date of any replacement or renewal policies furnished and maintained hereunder, Manager shall provide Owner with certificates of insurance evidencing that the insurance requirements of this Agreement have been satisfied. Owner and Manager acknowledge and agree that the policies and limits described herein shall be subject to adjustment by mutual agreement of the parties from time to time during the Term to reflect changes in the insuring practices for facilities similar to the Club Facilities and changes in insurance products.

(b) Owner shall maintain appropriate property coverage for the Club Facilities. Such policy(ies) shall include a replacement cost endorsement. Upon request, Owner shall provide Manager certificates of insurance evidencing the insurance required to be maintained by Owner under this Section.

#### **7.02 Waiver of Subrogation**

Owner and Manager each waive any and all rights of recovery against the other (and against the affiliates, members, shareholders, managers, directors, officers, employees and representatives

of the other party) for any loss, damage or injury to such waiving party or its property or others under its control, to the extent such loss, damage or injury is covered by the insurance maintained by the parties or required to be obtained by the parties under this Agreement (including any related deductible or retention), provided that this waiver does not apply to any rights that any party may have to insurance proceeds from their respective insurance policies at the time of such loss or damage. Each party obtaining any of the insurance described in Section 7.01 shall, to the extent commercially possible, obtain from its insurance carriers a consent to such waiver.

### **7.03 Indemnification**

(a) Each party shall defend, indemnify and hold the other party, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all reasonable legal costs and attorney fees, arising or alleged to arise out of or in connection with its performance of this Agreement, except as provided in subsection (c) of this section.

(b) In the event of any claim related to the parties' performance of this Agreement, each party shall first seek application of the primary insurance described in Section 7.01.

(c) All reserves, losses, costs, damages or expenses that fall within applicable self-insured or deductible limits as described in Exhibit C, together with any costs of administration of the Club Facilities' insurance program, shall be paid by Owner and shall be treated as a deduction in determining Net Operating Income.

(d) Notwithstanding subsection (c) of this Section, each party shall pay all claims, damages, losses, expenses, costs and attorney fees that a final court of competent jurisdiction has found results or arises out of its negligent or willful misconduct.

(e) Should a court of competent jurisdiction determine that this Agreement is subject to RCW 42A.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Manager and the Owner, Manager's liability hereunder (to the extent not otherwise covered by the insurance required to be maintained by Manager in accordance with Section 7.01) shall be only to the extent of Manager's negligence as determined by a final court of competent jurisdiction (or otherwise agreed by Manager in a settlement reasonably approved by Manager).

(f) In the event of any claim, damage, loss, expense or other cost arising under this Section, the parties agree to reasonably cooperate with, and provide reasonable assistance to, the other to first pursue and maximize possible insurance coverage and then, to the extent such claim, damage, loss, expense or other cost is not insured or falls within any applicable self-insured or deductible limits, defend and settle the claim, damage, loss, expense or cost. The parties agree, at Owner's request, to negotiate in good faith revisions to this Section 7.03 in the event claims, damages, losses, expenses or costs during any complete Operating Year greatly exceed the Club Facilities' historical loss history.

### **7.04 Waiver of Industrial Immunity**

SOLELY TO EFFECTUATE THE INDEMNITIES CONTAINED IN SECTION 7.03, EACH PARTY HERETO SPECIFICALLY AND EXPRESSLY WAIVES ANY IMMUNITIES OR LIMITATIONS ON LIABILITIES THAT IT MAY HAVE AS AN EMPLOYER UNDER ANY APPLICABLE WORKER COMPENSATION LAW, INDUSTRIAL INSURANCE ACT, OR ANY SIMILAR STATUTE.

MANAGER \_\_\_\_\_

OWNER \_\_\_\_\_

## ARTICLE VIII

### 8.01 Casualty

If the Club Facilities are damaged or destroyed by casualty and Owner reasonably determines it is not feasible to rebuild, Owner or Manager may terminate this Agreement. If Owner elects to rebuild, then this Agreement shall continue in full force and effect. If the Club Facilities are closed for longer than three (3) months as the result of such casualty and Owner elects to rebuild the Club Facilities, this Agreement and its obligations will be suspended until the Club Facilities are re-opened or such other time as the parties agree. The parties may negotiate an interim management agreement to cover the period of such suspension.

### 8.02 Condemnation

(a) Permanent Taking Upon a taking of either a fee interest in, or a perpetual easement on, all or any portion of the Club Facilities such that the part not taken may not reasonably be repaired, restored, replaced or rebuilt so as to constitute a golf facility as contemplated by the parties under this Agreement, either Owner or Manager shall, in its sole discretion, be entitled to terminate this Agreement on thirty (30) days' written notice to the other. Upon a taking of less than all of the subject Club Facilities, and if this Agreement has not terminated as permitted in this Section, this Agreement shall remain in full force and effect with respect to the remainder of the Club Facilities, and the awards or other proceeds on account of the taking on account of the taking shall not be included in the calculation of Gross Revenue for the Operating Year(s) in which received. Owner shall promptly repair, restore, replace or rebuild the remainder of the Club Facilities as nearly as possible to its value, condition, and character immediately prior to the taking and the costs of any such work shall not be deducted as an Operating Expense. Upon any taking, Manager shall, in its sole discretion, be entitled to terminate this Agreement on thirty (30) days' written notice to Owner.

(b) Temporary Taking If a temporary taking occurs so that the Club Facilities may not be operated in the manner consistent with the Operating Standard and continues in effect for a period of longer than twelve (12) months, either Owner or Manager shall, in its sole discretion, be entitled to terminate this Agreement on thirty (30) days' written notice to the other. Otherwise, upon a temporary taking of all or any portion of the Club Facilities, this Agreement shall remain in full force and effect, and the awards or other proceeds on account of the taking on account of the taking shall not be included in the calculation of Gross Revenue for the Operating Year(s) in which received. When and if, during the Term, the period of temporary taking ceases, Owner shall make all such restoration, repairs and alterations as are necessary to restore the Club Facilities to its condition prior to the taking. Owner shall promptly repair, restore, replace or rebuild the remainder of the Club Facilities as nearly as possible to its value, condition, and character immediately prior to the taking and the costs of any such work shall not be deducted as an Operating Expense.

## ARTICLE IX

### BUSINESS INTERRUPTION

In the event the Club Facilities suffer damage or loss as described in Section 8.01 that results in the interruption of operation of the Club Facilities for a period of three months or less, Owner shall be obligated during the period of interruption or any extended indemnity period (or until this Agreement is

otherwise terminated or suspended by the parties in accordance with Section 8 01) to pay Manager for services provided an interim monthly management fee equal to five percent (5%) of the Club Facilities' Gross Revenue for the same period of the prior year (the "Interim Management Fee") By way of example and for clarification purposes only, in the event a portion of the Club Facilities are damaged by fire and Owner elects to repair and re-open the Club Facilities during the three-month period of October through December 2013, Owner shall pay Manager a monthly Interim Management Fee equal to 5% of the Gross Revenue generated by the Club Facilities during the months of October, November and December in 2012 Owner's payment obligations under this Article IX shall be offset and reduced by any proceeds received by Manager under any business interruption policy maintained by Manager in accordance with Section 7 01

## ARTICLE X

### REPRESENTATIONS, WARRANTIES AND COVENANTS

#### 10.01 By Owner

Owner represents, warrants and covenants as follows

(a) Manager may peaceably and quietly possess, manage and operate the Club Facilities' during the Term, subject to the conditions hereof, free from interference, interruption or disturbance by Owner or its affiliates or anyone claiming through Owner or its Affiliates

(b) Owner has full power, authority and legal right to execute, perform and observe all of the provisions under this Agreement This Agreement constitutes a valid and binding obligation of Owner and does not constitute a breach or default under Owner's governing documents or the terms, conditions or provisions of any agreement or instrument to which Owner or any of its Affiliates is a party or any Applicable Law

(c) There is no litigation or proceeding pending or, to Owner's knowledge, threatened against Owner, Owner's Affiliates or the Club Facilities that could adversely affect the validity of this Agreement or the ability of Owner to comply with its obligations under this Agreement

(d) The Club Facilities are, and Owner will ensure that prior to the Commencement Date all activities and conditions associated with the Club Facilities will continue to be, in compliance with all Applicable Laws

(e) To the best of Owner's knowledge (i) no Hazardous Materials are present in or on, or have been released from, the Club Facilities, (ii) there exists no other surface or subsurface soil, water, mineral, chemical or environmental condition in, on or under the Club Facilities that presents or poses any threat to the health and safety of any person or any property or with the passage of time will require notice or reporting to any governmental authority or employees or patrons of the Club Facilities, or otherwise require, based on any legal requirement or standard of prudent ownership, monitoring or remedial action, (iii) there exists no identifiable threat of the contamination of the Club Facilities by release of Hazardous Materials from existing sources adjacent to the Club Facilities, and (iv) the Club Facilities contain no underground storage tanks

(f) As of the Commencement Date, (i) all leases, licenses, franchises, concessions, service agreements, mortgages or other agreements or security instruments with respect to the Club Facilities are in full force and effect and (ii) there exists no breach, default or event or condition

which, with the giving of notice or the passage of time or both, would constitute a breach or default under the Club Facilities agreements or instruments either by Owner or the other contracting party

(g) During the term of this Agreement, Owner shall use its best efforts to pay, keep, observe and perform all payments, terms, covenants, conditions and obligations to be made, kept, observed or performed by Owner under any lease, license, franchise, concession, mortgage or other agreement or security instrument with respect to the Club Facilities, and shall keep such agreements and instruments in full force and effect

(h) Owner has, and throughout the term of this Agreement shall maintain, good and marketable title to the Club Facilities and the FF&E and all operating equipment and supplies, free and clear of all liens and encumbrances

## **10.02 By Manager**

Manager represents, warrants and covenants as follows

(a) Manager has full power, authority and legal right to execute, perform and observe all of the provisions under this Agreement. This Agreement constitutes a valid and binding obligation of Manager and does not constitute a breach or default under Manager's governing documents or the terms, conditions or provisions of any agreement or instrument to which Manager or any of its Affiliates is a party or any Applicable Law

(b) There is no litigation or proceeding pending or, to Manager's actual knowledge, threatened against Manager or Manager's Affiliates that could adversely affect the validity of this Agreement or the ability of Manager to comply with its obligations under this Agreement

## **ARTICLE XI**

### **ENVIRONMENTAL**

#### **11.01 Environmental Laws**

Manager shall not use, generate, manufacture, store on, dispose of, produce, bring onto, or otherwise introduce to the Club Facilities any Hazardous Material, except those typically used in prudent and safe Club Facilities' operation. Owner shall indemnify, defend and hold the Manager harmless from and against all loss, costs, liability and damage (including, without limitation, engineers' and attorneys' fees and expenses, and the cost of litigation) arising from the presence of Hazardous Materials in, on or under the Club Facilities, except to the extent such loss, costs, liability or damage results from Manager's gross negligence or willful misconduct. For purposes of this Agreement, "**Hazardous Materials**" means and includes asbestos or any substance containing asbestos, polychlorinated biphenyls, any explosives, radioactive materials, chemicals known or suspected to cause cancer or reproductive toxicity, pollutants, effluents, contaminants, emissions, infectious wastes, petroleum or petroleum-derived waste or product or related materials and any items defined as hazardous, special or toxic materials, substances or waste under any Environmental Law, or any material which shall be removed from the Club Facilities pursuant to any administrative order or enforcement proceeding or in order to place the Club Facilities in a condition that is suitable for ordinary use. "**Environmental Laws**" means all federal, provincial and local laws (whether under common law, statute or otherwise), ordinances, rules, regulations and guidance documents now in force, as amended from time to time, in any way relating to or regulating human health or safety, industrial hygiene or environmental conditions, protection of the environment, pollution or contamination of the air, soil, surface water or groundwater,

including the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U S C §9601, et seq , the Resource Conservation and Recovery Act, 42 U S C §6901, et seq , the Clean Water Act, 33 U S C §1251 et seq , the Clean Air Act, as amended, 42 U S C §7401 et seq , the Occupational Safety and Health Act, 29 U S C §651 et seq , the Hazardous Materials Transportation Act, 49 U S C §1801 et seq , the Federal Water Pollution Control Act, 33 U S C §1321 et seq , and the Toxic Substances Control Act, 15 U S C §2601 et seq , and the amendments, regulations, orders, decrees, permits, licenses or deed restrictions now or hereafter promulgated thereunder

#### **11.02 Payment of Costs**

All costs and expenses paid by Owner in connection with the compliance with all Environmental Laws, and any amounts paid to the Manager pursuant to the environmental indemnities hereunder shall be paid by Owner from its own funds and shall not be an Operating Expense, but may be a deduction from the Capital Improvement Reserve upon mutual consent of the parties

### **ARTICLE XII**

#### **TRADEMARKS AND OTHER PROPRIETARY MATERIALS**

##### **12.01 Ownership of Manager Trademarks**

Owner acknowledges and agrees that Manager is and shall remain owner of the trademarks, trade name, service marks and copyrights associated with the name COLUMBIA HOSPITALITY and the related marks that include the words COLUMBIA HOSPITALITY, including COLUMBIA HOSPITALITY ACADEMY, and Manager's corporate logo or symbol, together with the right to use any and all URLs, slogans, derivations, trade secrets, know-how, and trade dress, and all other proprietary rights associated with such names, marks and slogans (the "Manager Trademarks") Owner agrees not to contest Manager's rights in respect of the Manager Trademarks, including any additions or improvements to the Manager Trademarks by whomever developed

##### **12.02 Use of Manager Trademarks**

As part of its management services provided under the terms of this Agreement, Manager will use the Manager Trademarks as it deems appropriate and advisable to identify, designate, market, advertise and promote the Club Facilities as being affiliated with the group of inns, hotels, resorts and other facilities managed by Manager, subject to the following terms

(a) In connection with Manager's use of the Manager Trademarks, the Club Facilities will be identified as being affiliated with the Manager's group of inns, hotels, resorts and facilities even though the Club Facilities will continue to be primarily designated as the "Gold Mountain Golf Club "

(b) Owner may not itself use the Manager Trademarks or apply for international, United States federal, or state or territorial registration of any rights in the Manager Trademarks Without Manager's prior consent, Owner may not use of the Manager Trademarks as all or part of its legal name or any other trade or assumed name under which Owner does business

(c) Manager retains the sole right and discretion to (i) determine how and on what materials the Manager Trademarks may be used and (ii) handle disputes and control actual or threatened litigation with third parties relating to any part of the Manager Trademarks

(d) Upon termination of this Agreement, any use of or right to use the Manager Trademarks shall immediately cease the Club Facilities will no longer be identified as being affiliated with the Manager's group of inns, hotels, resorts and facilities. As of the date of termination, Manager shall remove any proprietary signage, collateral or other materials from the Club Facilities.

#### **12.03 Use of Owner's Trademarks**

Owner hereby grants to Manager a temporary, royalty-free, revocable, non-transferable license to use the trademarks "Gold Mountain," "Gold Mountain Golf Club," "Tucker's at Gold Mountain," and derivations thereof, together with all other trademarks, trade names and logos associated with the Club Facilities in connection with the performance of Manager's obligations hereunder.

#### **12.04 Manager's Intellectual Property**

Owner acknowledges and agrees that Manager or its Affiliates may create, invent, author, produce, conceive or cause to be created, invented, authored, produced or conceived certain proprietary information, processes and systems and utilize or cause to be utilized such proprietary information, processes and systems in its management of the Club Facilities (collectively, "**Manager's Intellectual Property**") Manager's Intellectual Property may include certain operations manuals, daily, monthly, quarterly and annual operational reports, budget programs and worksheets, sales and marketing plans and materials, recipes, employee training and development materials and guest profiles and information. Owner may not access, use, copy, distribute, reproduce, or allow access to or use of, Manager's Intellectual Property except to the extent authorized by Manager and then only in conjunction with Manager's services provided under this Agreement. Owner acknowledges and agrees that all right, title and interest in and to Manager's Intellectual Property, and all copyrights, trademarks, or other intellectual property or proprietary rights relating thereto, are and shall remain the sole and exclusive property of Manager. Owner further acknowledges that no such right, title or interest in these items is granted under this Agreement to Owner.

### **ARTICLE XIII**

#### **LIMITATIONS ON SERVICES AND RELEASE**

##### **13.01 No Manager Representation re Insurance**

In connection with any insurance coverages required or obtained under this Agreement, Manager makes no warranty or representation as to the advisability, nature or extent of the insurance coverages furnished and maintained by Manager for the benefit of Owner or other coverages Owner should consider for the protection of the Club Facilities or their operations. Owner agrees to rely exclusively on its own insurance advisors with respect to all insurance matters.

##### **13.02 Financial Projections**

Any and all financial projections and budgets prepared by Manager under this Agreement, including the Annual Plans and Budget, are intended solely to assist Owner in operating the Club Facilities, but are not to be relied up on by Owner or any other third party as to the accuracy of information contained therein or the results predicted. Owner acknowledges and agrees that Manager shall not be held responsible by Owner or any third party for any divergence between such projections and budgets and actual operating results.

### **13.03 Warranty and Disclaimer**

MANAGER WARRANTS THAT IT WILL PERFORM ITS SERVICES HEREUNDER IN ACCORDANCE WITH THE DESCRIPTIONS SET FORTH IN THIS AGREEMENT USING GENERALLY ACCEPTED INDUSTRY STANDARDS AND PRACTICES. MANAGER DISCLAIMS ANY OTHER WARRANTIES OF ANY KIND, EITHER EXPRESSED, STATUTORY, OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES OF TITLE, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT.

### **13.04 Release**

Owner hereby unconditionally releases Manager and its Affiliates and their respective owners, officers, directors, employees, agents and assigns from, and waives any right or claim relating to, any and all claims, liabilities and obligations, whether now existing or hereafter arising, and whether known, unknown, fixed, contingent or otherwise, arising from or related to the matters described in this Article XIII.

## **ARTICLE XIV**

### **GENERAL TERMS AND CONDITIONS**

#### **14.01 Use of Affiliates**

Manager shall be entitled to contract with one or more of its Affiliates to provide goods and/or services to the Club Facilities, provided that the prices and/or fees paid to any such Affiliate are competitive with the prices and/or fees that would be charged by reputable and qualified parties that are not Affiliates of Manager for similar goods and/or services. The prices and/or fees paid to its Affiliates may include overhead and the allowance of a reasonable return customary for the goods and/or services to be provided.

#### **14.02 Independent Contractor**

Manager and its employees are not employees of the Owner. Manager will perform the services hereunder solely as an independent contractor and as agent of Owner. Neither this Agreement nor any agreements, instruments, documents or transactions contemplated herein shall in any respect be interpreted, deemed or construed as making Manager or its employees, agents, representatives and contractors an employee, partner or joint venturer with, or of, Owner or any of its Affiliates.

#### **14.03 Confidentiality**

Each party will use commercially reasonable efforts to keep in confidence and prevent the disclosure to any third party of any Confidential Information it receives from the other party. Notwithstanding the foregoing, the receiving party may disclose Confidential Information

(a) to its members, managers, employees, agents, lenders, advisors and attorneys on a "need to know" basis, provided that each such person has agreed to keep in confidence and prevent the disclosure to any third party of the Confidential Information, or

(b) required to be disclosed pursuant to provisions of law (Public Records Act Chapter 42.56 RCW or other similar law) or a subpoena, provided that, if allowed by law, the receiving party



provides the disclosing party with timely written notice of the subpoena or order, and cooperates with the disclosing party in obtaining confidentiality orders

Each party will be entitled to equitable relief by way of injunction, temporary restraining order or otherwise, without the need to post a bond, if the other party breaches or threatens to breach any provision of this Section 14.03

#### **14.04 Notices**

All notices will be in writing and will be deemed duly given if (a) personally delivered, (b) sent by facsimile (with electronic confirmation of delivery), (c) sent by overnight delivery through a nationally-recognized overnight delivery service or (d) mailed registered or certified mail, return receipt requested, postage prepaid. Each notice will be delivered to the intended recipient at the applicable address or facsimile number set forth below or at any other address or facsimile number as any party notifies the other party in writing. Notices or other communications that are sent by (x) personal delivery or facsimile, will be deemed received on the day sent or on the first business day thereafter if not sent on a business day, (y) overnight delivery, will be deemed received on the first business day immediately following the date sent, and (z) U.S. mail, will be deemed received three business days immediately following the date sent. Notices shall be sent to the following addresses:

If to Owner	City of Bremerton City Hall, 345 6th Street, Suite 600 Bremerton, WA 98337 Attention: Director of Financial Services
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Telephone (360) 473-5722  
Facsimile (360) 473-5200

If to Manager	Columbia Hospitality, Inc 2223 Alaskan Way, Suite 200 Seattle, WA 98121 Attention: John Oppenheimer
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Telephone (206) 239-1800  
Facsimile (206) 239-1801

with a copy to	Garvey Schubert Barer 1191 Second Avenue, 18 <sup>th</sup> Floor Seattle, WA 98101-2939 Attention: Gregory J. Duff, Esq.
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Telephone (206) 464-3939  
Facsimile (206) 464-0125

#### **14.05 Entire Agreement and Modification**

This Agreement constitutes all of the understandings and agreements of any nature existing between the parties with respect to the management services Manager will perform for Owner under the terms of this Agreement. Unless otherwise provided for herein, no amendments, changes, alterations or modifications of this Agreement shall be effective unless they are in writing executed by Manager and Owner.

#### **14.06 Governing Law and Venue**

This Agreement will be construed and interpreted in accordance with the laws of the State of Washington, without regard to applicable choice of law principles. Any mediation, arbitration or legal proceeding that arises out of or in connection with this Agreement will be initiated and maintained in Kitsap County, Washington. Each party consents to jurisdiction and venue in such courts and waives the right to claim that any such court is an inconvenient forum.

#### **14.07 Attorneys' Fees**

In the event an action is commenced by either party to enforce any right or obligation hereunder or interpret this Agreement, each party shall pay all its own costs and attorney's fees.

#### **14.08 Assignment and Binding Effect**

Neither party may assign, pledge, encumber or otherwise transfer (whether by operation of law or as a result of merger, consolidation, reorganization or sale of assets or equity) its interest in this Agreement or any of its rights or obligations under this Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed, provided that so long as Manager is not then in material breach of default of this Agreement, Manager shall have the right, without Owner's consent, to assign all or a portion of its rights and obligations under this Agreement to (a) any Affiliate of Manager, (b) any successor to Manager that may result from any merger, consolidation or reorganization, or (c) any individual or entity that acquires all or substantially all of the business assets of Manager. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of the parties' successors and permitted assigns.

#### **14.09 Waiver**

No delay or omission in exercising any right or remedy will be deemed a waiver of any right or remedy. No waiver of any provision of this Agreement will constitute a waiver of any other provision of this Agreement, nor will any waiver constitute a continuing waiver unless so specified in writing executed by the party to be bound.

#### **14.10 Counterparts; Facsimile**

This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument, with the same effect as if the signatures thereto were in the same instrument. This Agreement will be effective and binding on the parties when both parties have executed and delivered a counterpart of this Agreement, it being agreed that facsimile signatures shall be binding on the parties.

#### **14.11 Limited Restrictions on Manager**

Neither Manager nor any of its Affiliates is restricted from owning, operating, licensing, franchising, managing, advising, or otherwise associating in any way with any other hotel, time-share facility, interval ownership facility, vacation club, residential facility, food and beverage operation, or other business of any kind, whether or not such business may be considered competitive, directly or indirectly, with the Club Facilities, and Manager and its Affiliates are expressly permitted to engage in any or all of such activities, except that, Manager shall not manage or operate any golf course or golf club facilities in Kitsap County without Owner's consent, such consent not to be unreasonably withheld, conditioned or delayed.

#### **14.12 Non-Solicitation**

During the Term and for two (2) years following expiration or earlier termination of this Agreement, Owner shall not directly or indirectly, for itself or any Affiliate, solicit, recruit, hire, employ or retain the services of, any personnel of Manager or any Affiliate of Manager that performed services at, or for, the Club Facilities during the 12-month period immediately preceding the expiration or earlier termination of this Agreement

#### **14.13 Patriot Act**

Each party represents, warrants and covenants that neither it nor any of its Affiliates (or any of their respective principals, partners or funding sources) is nor will become (a) a person designated by the U S Department of Treasury's Office of Foreign Asset Control as a "specially designated national or blocked person" or similar status, (b) a person described in Section 1 of U S Executive Order 13224 issued on September 23, 2001, (c) a person otherwise identified by a government or legal authority as a person with whom an owner or manager of a hotel is prohibited from transacting business, (d) directly or indirectly owned or controlled by the government of any country that is subject to an embargo by the United States government, or (e) a person acting on behalf of a government of any country that is subject to an embargo by the United States government Each party shall notify the other in writing immediately upon the occurrence of any event which would render incorrect any of such party's representations and warranties under this Section

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the Effective Date

**OWNER**

City of Bremerton

By \_\_\_\_\_  
Its \_\_\_\_\_

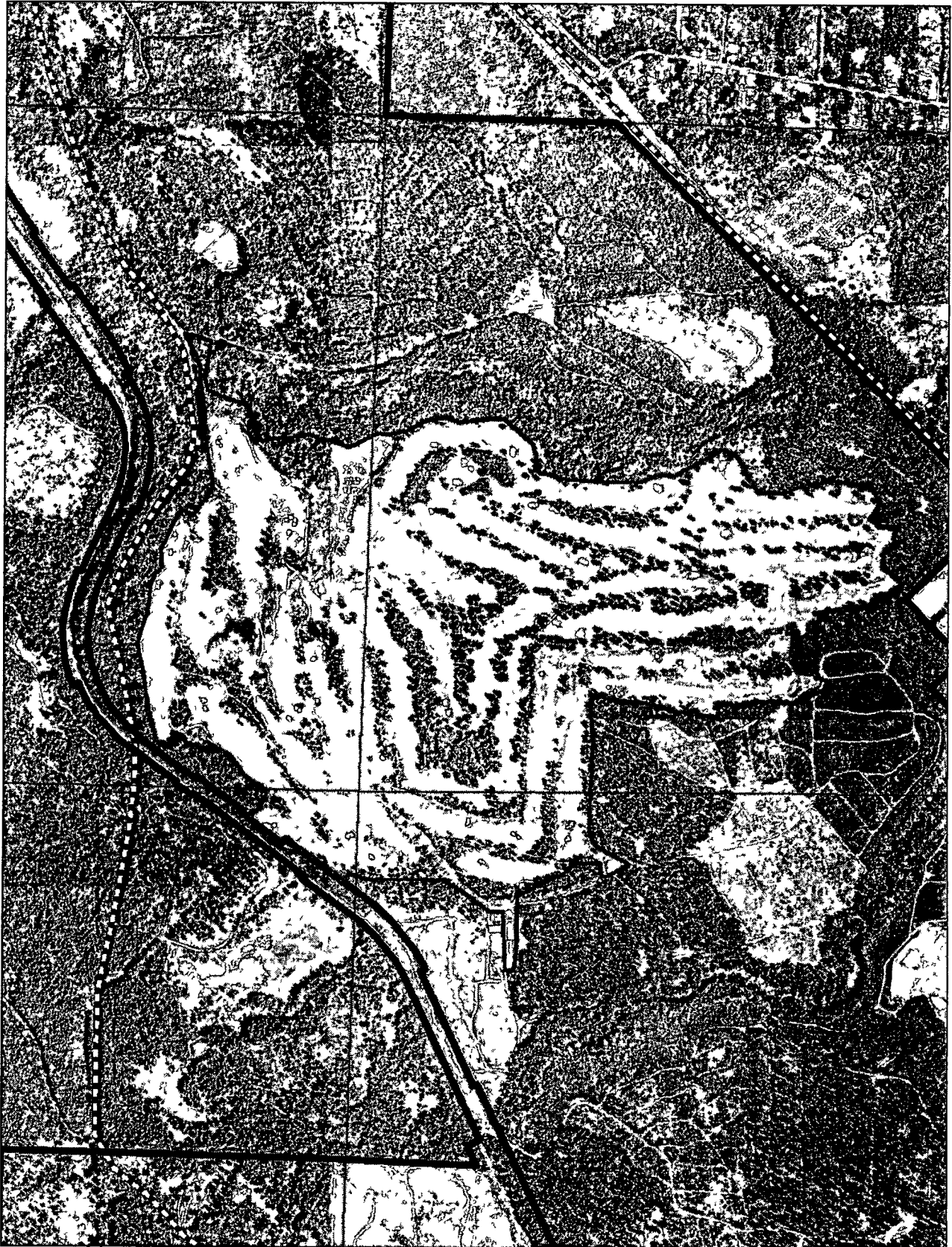
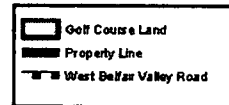
**MANAGER**

Columbia Hospitality, Inc

By \_\_\_\_\_  
Its \_\_\_\_\_

R \Legal\Legal\Files\Current Active Files\Gold Mountain\Columbia Hospitality Agreement - 2012\Gold Mountain Golf Course Management Agreement (9-25-12) Final.doc

Exhibit "A"  
Golf Course  
Area  
(red boundary line)



digital map project/golf course stip SC 3000  
10-27-07

1"=300'

6,000 Feet

4,500

3,000

1,500

750

0

## **Exhibit B**

### **Maintenance Standards**

The following are the parameters of the maintenance practices and programs for the Cascade and Olympic courses

#### **A. Maximum Mowing Heights**

<u>Cutting Height Settings</u>	<u>Summer</u>	<u>Winter</u>
Tees	1/2"	1/2"
Fairways	1/2"	1/2"
Roughs	1-1/4"	1-1/4"
Collars	1/2"	1/2"
Greens	125"	150"

#### **B. Mowing Standards**

<u>Frequency Per Week</u>	<u>Summer</u>	<u>Winter</u>
Tees	2	As Needed To
Fairways	3	Maintain Maximum
Roughs	2	Mowing Heights
Collars	3	
Greens	7	

#### **C. Bunkers Raked**

<u>Frequency Per Week</u>	<u>Summer</u>	<u>Winter</u>
	3	As Needed

#### **D. Aerification**

##### Greens And Aprons

All greens aerification will be coordinated with the pro staff to mitigate impact to tournaments and special events, and timed to maximize revenues

Spring Aerification will be performed with a minimum 5/8" hollow tines

Fall Aerification will be performed with a minimum 5/8" hollow tines

##### Tees, Fairways And Greens Surrounds

These areas will be aerified a minimum of once per year with 3/4" hollow tines

**E. Reserved**

**F. Regular Maintenance Practices**

Light sand top-dressing of the greens will be done monthly during the growing season

Cup location and tee markers will be changed daily during the growing season

Fairway divots will be filled with sand and seed monthly

Divots on tees will be filled with sand and seed daily

Divots on driving range tee will be filled with sand and seed a minimum of 4 days per week

Both courses will be kept free of storm blow-down and branches Encroaching brush and Scotch Broom will be cut back yearly

Cart paths and bunkers will be edged a minimum of once per year

All restrooms will be cleaned and sanitized daily

Clubhouse lawns and landscaping will be maintained regularly

Parking lot and entry road will be kept clean and debris free

**G. Equipment Maintenance**

Regularly scheduled maintenance will be performed on all equipment to minimize costly repairs and equipment down time

All repairs and parts will be documented to help identify problem equipment and determine cost effectiveness of repair vs replacement

All cutting unit blades will be sharpened regularly to ensure a precise clean cut in order to keep the turf healthy and the playing surface smooth

**H. Irrigation**

Manager will maintain the irrigation system in accordance with Section 6 01 Owner will contract with and manage (in a manner consistent with Manager's operation of the Club Facilities in accordance with the Agreement) an outside agent for preventive maintenance of the irrigation pump stations on both the Olympic course and the Cascade Course Manager will work with Owner's Water Resource Manager to coordinate water usage and water pressure concerns

**I. Chemical Use**

Manager will work closely with the Water Resource Division of Owner in the use of chemicals and their application A list of all pesticides and other chemicals must be maintained by the Manager including the MSDS information sheets, dates and time applied, the person who

applied the chemical and other information that may be required by OSHA, WISHA, Department of Labor and Industry, EPA and any other city, county, state, or federal agency that would have enforcement authority

**J. Fertilization**

Manager will set up a fertilization program for the Club Facilities and work closely with the Director of Parks and Recreation to determine a yearly budget for fertilizer

**K. Tree Removal**

Hazardous trees will be removed by Manager's maintenance crew as required for safety. Manager will work with Owner's Forestry Manager for removal of any trees that are not related to safety.



## **Exhibit C**

### **Manager's Insurance Requirements**

To the extent commercially permissible or otherwise noted herein, the Manager and Owner shall be named insureds under the policies listed below. Deductibles, if any, for the following policies shall be subject to Manager's prior review and approval.

(a) Commercial General Liability insurance on an occurrence basis against claims for personal injury (including bodily injury or death) and tangible property damage occurring on, in or about the Club Facilities or otherwise arising under this Agreement in an amount not less than that generally provided in policies of insurance procured by operators of other Club Facilities in the same general region in which the Club Facilities are located, but in no event less than \$1 million per occurrence and \$2 million aggregate limit. This insurance must include bodily injury and property damage liability, independent contractors' liability, contractual liability, products and completed operations liability, liquor liability for host and liquor legal liability, innkeepers legal liability and personal and advertising injury liability and shall be primary and non-contributory to any insurance maintained by either party. The policy will also include Premises Medical coverage with an applicable limit of \$5,000. There shall be no deductible for this coverage.

(b) Commercial automobile liability insurance on an accident basis against claims for injury or death to persons or damage with minimum limits of liability of \$1 million combined single limit for each accident. Such insurance must include coverage for bodily injury liability, property damage liability, and the operation of owned, hired and non-owned vehicles. There shall be no deductible for this coverage.

(c) Workers' compensation insurance as shall be required by and be in conformance with the applicable laws of the jurisdiction in which the Club Facilities are located, including employers liability insurance with limits of not less than \$1 million for each accident and disease for all of the employees involved in the Club Facilities' operations. The Manager shall be the only named insured.

(d) Excess or "umbrella" liability insurance no less broad than the underlying General Liability, Automobile Liability, and Employers Liability coverages set forth above on an occurrence basis providing excess coverage in a total amount no less than \$15 million in the annual aggregate. The deductible or self insured retention for this coverage shall not exceed \$10,000.

(e) Employment practices liability insurance (with an extended reporting period not less than one (1) year in the event that the coverage is given in a "claims made" form) in an amount not less than \$2 million per occurrence/annual aggregate. The deductible or self insured retention for this coverage shall not exceed \$10,000.

(f) To the extent determined by Manager to be economically feasible, insurance against business interruption and extra expense resulting from loss or damage from hazards to all property (real and personal). The Manager shall be the only named insured under this policy.

(g) Comprehensive crime insurance, including employee dishonesty, to the extent Manager and Owner mutually agree it is necessary for the Club Facilities.

(h) Contractor's pollution coverage for Manager's operation of the Club Facilities with minimum limits of liability of \$2 million. The Manager shall be the only named insured under this policy.

(1) Such other insurance in amounts as Manager and Owner in their reasonable judgment, deem advisable for protection against claims, liabilities and losses arising out of or connected with the Club Facilities

Gold Mountain Consolidated Pro Forma

	2011 Base Year Comparison		Conservative 2013		Moderate 2013		Aggressive 2013		City Adjusted 2013	
<b>Revenues</b>										
<b>Pro Shop Operations</b>										
Greens Fees	\$ 2,046,000		\$ 2,148,300		\$ 2,189,220		\$ 2,250,600		\$ 1,900,000	
Pull cart and club rental	\$ 11,745		\$ 12,332		\$ 12,567		\$ 12,920		\$ 10,830	0 6%
Driving Range	\$ 102,414		\$ 107,535		\$ 109,583		\$ 112,655		\$ 95,190	5 0%
Pro Shop merchandise	\$ 424,453		\$ 445,676		\$ 454,165		\$ 466,898		\$ 394,250	20 8%
Misc & Other	\$ 45,686		\$ 47,970		\$ 48,884		\$ 50,255		\$ 42,370	2 2%
<b>Total Pro Shop Revenue</b>	<b>\$ 2,630,298</b>	<b>66 0%</b>	<b>\$ 2,761,813</b>	<b>66 0%</b>	<b>\$ 2,814,419</b>	<b>66 0%</b>	<b>\$ 2,893,328</b>	<b>66 0%</b>	<b>\$ 2,442,640</b>	<b>66 0%</b>
<b>Golf Cart Rentals</b>										
Cart Rentals	\$ 452,540	11 3%	\$ 475,167	11 3%	\$ 484,218	11 3%	\$ 497,794	11 3%	\$ 418,210	11 3%
<b>Food and Beverage Division</b>										
Total F&B revenue	\$ 905,312	22 7%	\$ 950,578	22 7%	\$ 968,684	22 7%	\$ 995,843	22 7%	\$ 840,120	22 7%
<b>Total Revenue</b>	<b>\$ 3,988,150</b>	<b>100 0%</b>	<b>\$ 4,187,558</b>	<b>100 0%</b>	<b>\$ 4,267,321</b>	<b>100 0%</b>	<b>\$ 4,386,965</b>	<b>100 0%</b>	<b>\$ 3,700,970</b>	<b>100 0%</b>
<b>Departmental Profit</b>										
Pro Shop	\$ 1,613,437	61 3%	\$ 1,759,933	63 7%	\$ 1,807,416	64 2%	\$ 1,881,202	64 2%	\$ 1,555,962	63 7%
Food and Beverage	\$ 5,074	0 6%	\$ 66,591	7 0%	\$ 80,589	8 3%	\$ 103,639	8 3%	\$ 58,808	7 0%
Cart Rental	\$ 330,522	73 0%	\$ 353,149	74 3%	\$ 362,200	74 8%	\$ 375,776	74 8%	\$ 310,730	74 3%
<b>Total Departmental Profit</b>	<b>\$ 1,949,033</b>	<b>48 9%</b>	<b>\$ 2,179,673</b>	<b>52 1%</b>	<b>\$ 2,250,205</b>	<b>52 7%</b>	<b>\$ 2,360,617</b>	<b>52 7%</b>	<b>\$ 1,925,500</b>	<b>52 0%</b>
<b>Grounds Maintenance</b>										
<b>Total Grounds Maintenance</b>	<b>\$ 1,340,618</b>	<b>33 6%</b>	<b>\$ 1,273,587</b>	<b>30 4%</b>	<b>\$ 1,273,587</b>	<b>29 8%</b>	<b>\$ 1,273,587</b>	<b>29 8%</b>	<b>\$ 1,273,587</b>	<b>34 4%</b>
<b>GROSS OPERATING PROFIT</b>	<b>\$ 608,415</b>	<b>15 3%</b>	<b>\$ 906,086</b>	<b>21 6%</b>	<b>\$ 976,618</b>	<b>22 9%</b>	<b>\$ 1,087,030</b>	<b>24 8%</b>	<b>\$ 651,913</b>	<b>17 6%</b>
Base Management Fees	\$ 199,408	5 0%	\$ 209,378	5 0%	\$ 213,366	5 0%	\$ 219,348	5 0%	\$ 185,048	5 0%
Insurance & Real Estate Costs	\$ -		\$ -		\$ -		\$ -		\$ -	
<b>Total A&amp;G, etc.</b>	<b>\$ 199,408</b>		<b>\$ 209,378</b>		<b>\$ 213,366</b>		<b>\$ 219,348</b>		<b>\$ 185,048</b>	
<b>NET OPERATING INCOME</b>	<b>\$ 409,008</b>	<b>10 3%</b>	<b>\$ 696,708</b>	<b>16 6%</b>	<b>\$ 763,252</b>	<b>17 9%</b>	<b>\$ 867,682</b>	<b>19 8%</b>	<b>\$ 466,864</b>	<b>12 6%</b>
Incentive Management Fees	\$ -		\$ 19,342		\$ 32,650		\$ 53,536		\$ -	
Capital Reserve	\$ -		\$ 167,502		\$ 170,693		\$ 175,479		\$ 148,039	
<b>Net Income</b>	<b>\$ 409,008</b>	<b>10 3%</b>	<b>\$ 509,864</b>	<b>12 2%</b>	<b>\$ 559,909</b>	<b>13 1%</b>	<b>\$ 638,667</b>	<b>14 6%</b>	<b>\$ 318,826</b>	<b>8 6%</b>
2013 Debt Service			\$ 282,030		\$ 282,030		\$ 282,030		\$ 282,030	
			<u>\$ 227,834</u>		<u>\$ 277,879</u>		<u>\$ 356,637</u>		<u>\$ 36,796</u>	

<b>Total Management Fees</b>	<b>\$ 199,408</b>	<b>\$ 228,720</b>	<b>\$ 246,016</b>	<b>\$ 272,885</b>	<b>\$ 185,048</b>
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September 12 2012

**"RECEIVED CITY COUNCIL OFFICE"**

DATE 9/13/12

CC: Council Members  
Parks Dept

Mayor Patty Lent  
City of Bremerton  
345 6<sup>th</sup> Street, Suite 600  
Bremerton, Washington 98337-1873

Honorable Mayor Lent

I live and pay taxes in Port Orchard and play golf at the beautiful Gold Mountain Golf Courses

I read the article by Chuck Stark in the Kitsap Sun on September 6<sup>th</sup> If all the facts that were stated are true in fact, then it doesn't make sense NOT to open up the management and operations of the two courses to some sort of bid The City of Bremerton and its officials should at least be receptive to other management companies ideas and proposals, especially when there's the potential of millions of dollars involved and/or at stake

I totally agree with Greg Wheeler's idea of, and I quote, "the proposal go out for a competitive bid from companies with golf course management experience " Further, "the city ought to pull in its reins, take a deep breath & start over on this process. Gold Mountain's 36 hole facility is world class Don't screw it up "

Mayor Lent, I sincerely encourage you to consider all bids from the experienced hands-----  
its only right !

Very truly yours,



Fred Kubasak  
(e-mail [fkubasak@msn.com](mailto:fkubasak@msn.com))

Fred Kubasak  
P O Box 875  
Machester, WA 98353

# Kitsap Sun

Read more at [kitsapsun.com](http://kitsapsun.com)

## CHUCK STARK | Not too late to change course on Gold Mountain

By Chuck Stark

Wednesday, September 5, 2012

I'll preface this by saying I have no clue why the city of Bremerton has such a strong desire to have Columbia Hospitality, a company that has no history managing golf courses, take over operations of Gold Mountain Golf Club in 2013

For some reason, Bremerton mayor Patty Lent has targeted the Seattle-based company, which manages the Kitsap Conference Center, to manage the golf course

Your guess is as good as mine

I've written this before, but I'll write it again I have nothing against Columbia Hospitality, but it boggles my mind that the mayor and the city would not open this up to some sort of bid

Touchstone Golf vice president Lynn Shackelford, the former UCLA basketball star and golf course owner/investor, got hold of me after I'd questioned the city's sanity on this topic in this space last month

Shackelford said there's no doubt that the top golf course management companies in the country would be interested in sitting down with city officials

Why wouldn't city officials be interested in listening to them?

I've been told that a couple of management groups made inquiries, but the city opted to go down the Columbia Hospitality path

Current Gold Mountain pro Daryl Matheny, who was the business partner of outgoing director of golf Scott Alexander for the last 16 years and has been at the course for 24 years overall, also expressed an interest in managing the course You'd think the city would be interested in listening to his proposal or at least seek his opinions

At least one City Councilman, Greg Wheeler, agrees with me, but he appears to be the lone wolf on this issue

Wheeler would like to see the proposal go out for a competitive bid from companies with golf course management experience

"I think this is one of our biggest assets," Wheeler said in a story the Kitsap Sun printed last week

Wheeler evidently wasn't able to sway any of his cohorts

"I got no takers," he said "I think there were some reservations, but the train's left the station "

Really?

Is it too late to stop that train?

I've had calls and people have stopped me in the super market to say that they agree with me on this point One guy suggested they should storm the chambers at a city council meeting to voice their displeasure with how this process has played out

Because of the debt that the city has to payoff, this is a complicated deal I'm not sure if there's a lot of people within city government who understand the business of operating a golf course

Columbia Hospitality has admitted it has no expertise in that area They've talked to Matheny and respected greens superintendent Ed Faulk about possibly retaining them if they are able to work out a deal with the city Originally, the city said it would contract with Faulk

Sounds to me like the city would be adding a middle man to the middle man

Sound to me like the city ought to pull in its reins, take a deep breath and start over on this process

When it's all said and done, if Columbia Hospitality is by far and away the best choice, cool Sign the dotted lines and let's move forward

But the city should look at all of its options before doing that

Gold Mountain's 36-hole facility is world class Don't screw it up

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So the Kitsap Pumas are suing the Bremerton School District and trying to convince Kitsap County official to dress up Gordon Field and use it for its home Premier Development League games All the legal stuff aside, I've got mixed emotions

I thought Memorial Stadium was a pretty cool place to watch a soccer game The grass field was immaculate and I really liked sitting in the end zone seats

That said, if the county and Pumas owner Robin Waite can come up with a way of turning Gordon Field into a venue that can hold 2,000 fans with a restroom, concession, press box etc , it could become soccer central for the Kitsap Peninsula There's plenty of parking, it's centrally located and the Pumas would have also have an

opportunity to put a beer garden on the grounds, which would help put some fans into the stands

If you can turn Gordon Field in a soccer palace, and Waite puts up the majority of the money, and youth soccer remains the primary tenant, then I'm all for it

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Former Sun sportswriter Terry Mosher — you still see his byline in our pages regularly — reported that Babe Ruth League, Inc. was so impressed with the recently completed 13-year-old Babe Ruth World Series that they asked the hosts from North Kitsap Babe Ruth to do it again — next year

Evidently an Ohio city that was suppose to host the 2013 Babe Ruth World Series for 14-year-olds unexpectedly pulled out "We politely said no," organizer Brent Stenman said "Even they said it's best to wait a few years in between, if for no other reason than for sponsorships. It's pretty hard to go back and ask all of the sponsors to pony up again next year "

Besides, Stenman and Russ Barker — the two who brought the tournament to town — are probably burned out

"So it probably wasn't a great time to ask us," Stenman told Mosher "Still, (it was) a nice feather in our cap "



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**From:** Christine Grenier on behalf of City Council  
**Sent:** Friday, September 07, 2012 10:55 AM  
**To:** Faye Flemister  
**Cc:** Patty Lent, Roger Lubovich, Wyn Birkenthal, Adam Brockus, Eric Younger, Eric Younger, Faye Flemister, Greg Wheeler, Jim McDonald, Leslie Daus, Nick Wofford, Roy Runyon  
**Subject:** citizen message - Golf Course Management (Terri Dodge)

Good morning, Faye

You received a call from Terri Dodge on Thursday at 4:44 PM who expressed concerns about the proposed golf course management contract (scheduled for September 12 Study Session). She believed that Gold Mountain "is a jewel" and should be managed by "people with experience". Ms. Dodge hoped that you would "stand against the Mayor" on this issue.

The Kitsap Sun article she referred to may be viewed by following this link: <http://www.kitsapsun.com/news/2012/sep/05/chuck-stark-its-not-too-late-for-city-to-change/>

Ms. Dodge would appreciate a call at your convenience at (360) 377-5076.

Christine



## Christine Grenier

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**From:** Scott Winch <[swinch@HamptonGolfClubs.com](mailto:swinch@HamptonGolfClubs.com)>  
**Sent:** Wednesday, September 05, 2012 7:29 AM  
**To:** City Council  
**Subject:** Gold Mountain Golf Complex - Management

Mr. Wheeler,

After reading the recent articles referencing the City of Bremerton's search for new management of the Gold Mountain Golf Complex, I felt inclined to contact you in order to discuss the opportunity to present a "competitive bid from a company with golf course management experience." I believe you understand the intricacies involved in operating such an important asset, so to retain a company with no experience in managing golf courses without even reviewing a competing bid could be catastrophic for the City. Although I am obviously biased to Hampton Golf, I implore you to at least review a management proposal from one competing company, even if the review is solely to assist in negotiating the management agreement with Columbia Hospitality. Feel free to contact me directly if you have any additional questions or concerns.

Sincerely,

**Scott Winch, Esquire**

VP of Operations / General Counsel

**Hampton Golf**

10401 Deerwood Park Blvd., Ste. 2130

Jacksonville, FL 32256

904 564 9129 (o)

904 564 1568 (f)

[swinch@hamptongolfclubs.com](mailto:swinch@hamptongolfclubs.com)

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## Christine Grenier

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**From** Rob Waldron <rwaldron@billycaspergolf.com>  
**Sent** Friday, July 27, 2012 11:09 AM  
**To** Patty Lent, City Council, Becky Hasart, Parks, Legal  
**Subject** City of Bremerton - Gold Mountain Golf Course  
**Attachments** BCG Intro Package July 2012 pdf, Keegan Privatization Article pdf

July 27, 2012

Dear Mr. Mayor, City Council Members and City of Bremerton Staff

We have been following the challenges the City of Bremerton has been facing with the operation of Gold Mountain Golf Club for the past several years. You are not alone. Municipal golf courses across the Country have been fighting downward trends in rounds and revenue while faced with escalating operating expenses resulting in lower profit contributions to municipalities. At Billy Casper Golf ("BCG") we have been able to buck this trend with most of our municipal facilities through creative marketing and attention to detail with respect to course conditioning and customer service as well as the implementation of cost controls.

Billy Casper Golf is the largest operator of Municipal golf courses in the United States with more than 75 municipal courses under management. Our Regional Office which is based in Northern California provides support for all of our Western US operations. We currently operate several municipal facilities in Washington State including Sumner Meadows GC and Tri Mountain GC. We would welcome the opportunity to discuss how we can help you with your golf course operations. Below is an outline how Billy Casper Golf has made a significant difference at facilities similar to Gold Mountain Golf Club.

- 1 **BCG is a golf course owner themselves** – We walk in your shoes every day. BCG understands and appreciates what is critical to your success.
- 2 **The marketing efforts are powered by "Guest Trac"** – This proprietary marketing software package is utilized for targeted marketing programs designed to acquire new golfers and retain existing golfers.
- 3 **Purchasing Power = Economy of Scale** - All BCG managed clubs receive discounts and special promotional programs for purchases at the golf course – significant savings for most facilities.
- 4 **HR – Training and administrative support staff** – Creates a revenue culture and guest-centric focus among all staff members.
- 5 **Regional Support Structure** – Our Regional Marketing, Agronomy, and Golf Operations support is unique to the Golf Industry.
- 6 **Buffalo Communications** – BCG's in-house Public Relations Group provides publicity and media relations to all BCG managed properties.

**Timing is not an issue for BCG. By August we will have transitioned nearly 25 new golf course operations into our portfolio in 2012. Our transition Team are experts at providing quick, seamless transitions of all facets of golf course operations.**

I have attached an intro package some background information about Billy Casper Golf and the services we provide as well as an interesting article regarding the trend towards privatization of municipal golf courses authored by Jim Keegan, noted golf industry consultant.

We are available at your convenience to discuss the merits of working with BCG. Thank you for your time and consideration.

Rob Waldron

*Rob Waldron*

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Rob Waldron  
Business Development Manager

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